

1088
No. 2957

United States 1088
Circuit Court of Appeals
For the Ninth Circuit.

WILLIAM H. MOORE, JR., as Trustee of the Estate
of Alfred W. Bannister, a bankrupt,
Appellee.

vs.

NATIONAL BANK OF BAKERSFIELD, a cor-
poration organized and existing under and by
virtue of the laws of the United States, et al.,
Appellants.

Transcript of Record.

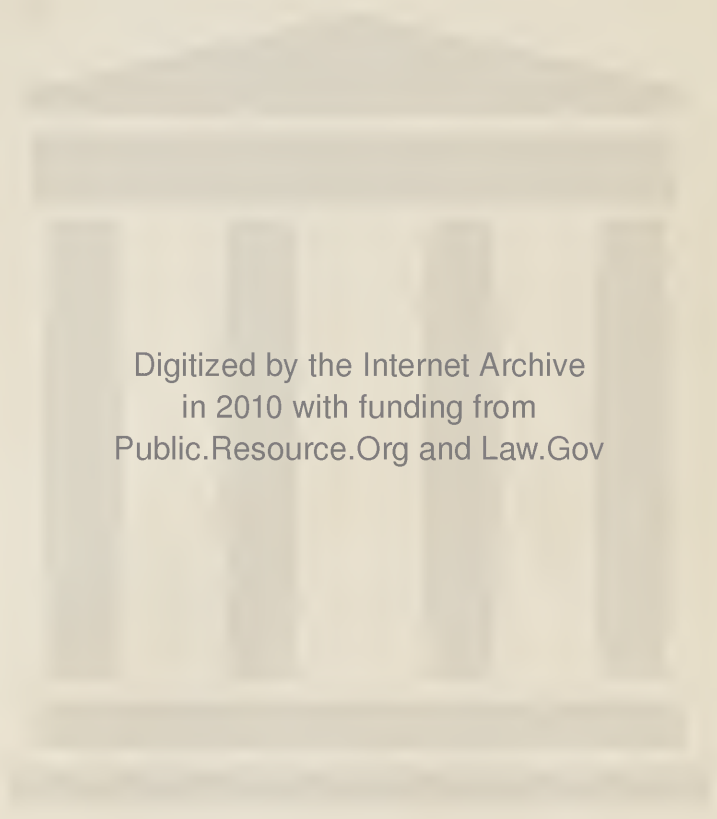
Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

Filed

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F. D. Monckton,

Clerk.



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For the Ninth Circuit.

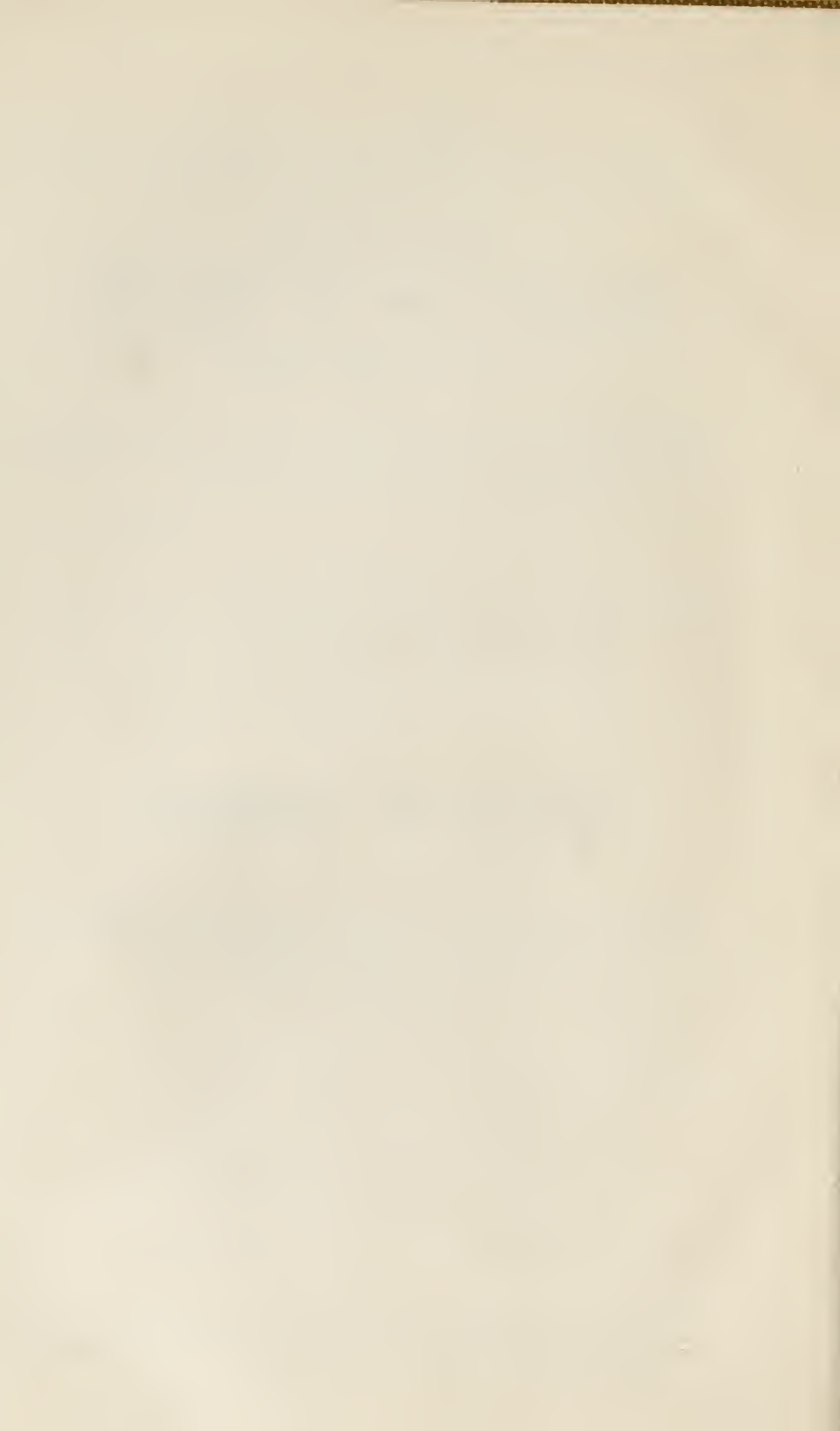
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italics* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Complainant and Appellee:

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For Defendants and Appellants:

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HUNSAKER & BRITT, 1132 Title Insurance
Building, Los Angeles, California.

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

In Equity. No. B 94.

WILLIAM H. MOORE, JR., as Trustee of the Estate
of Alfred W. Bannister, a bankrupt,
Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a cor-
poration organized and existing under and by
virtue of the laws of the United States,
Defendant.

Citation on Appeal.

United States of America,—ss.

To WILLIAM H. MOORE, JR., Trustee of the Estate
of Alfred W. Bannister, a Bankrupt, Greeting:

You are hereby cited and admonished to be and ap-
pear at the United States Circuit Court of Appeals for
the Ninth Circuit, at the City of San Francisco, Cali-
fornia, within thirty days from the date of this writ,
pursuant to an appeal duly allowed by the District
Court for the Southern District of California, Southern
Division, and filed in the clerk's office of said court on
the 16th day of January, 1917, in a cause wherein
National Bank of Bakersfield, a corporation, is appel-
lant and you are respondent, to show cause, if any,
why the decree rendered against said appellant, as in
said appeal mentioned, should not be corrected, and
why speedy justice should not be done to the parties in
that behalf.

WITNESS the Hon. OSCAR A. TRIPPET, Judge

of the United States District Court for the Southern District of California, Southern Division, this 16th day of January, 1917.

OSCAR A. TRIPPET,
District Judge.

Service of a copy of the within citation is hereby admitted, this 16th day of January, 1917.

LUCIUS K. CHASE,
E. U. SCHROETER,
Attorneys for Respondent.

[Endorsed]: No. B 94. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., Defendant. Citation on Appeal. Filed Jan. 16, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal., Attorneys for Defendant.

*In the District Court of the United States of America,
in and for the Southern District of California,
Southern Division.*

No. In Equity.

WILLIAM H. MOORE, JR., as Trustee of the Estate
of Alfred W. Bannister, a bankrupt,
Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States,
Defendant.

Bill of Complaint.

To the Honorable Judges of the District Court of the United States, in and for the Southern District of California, Southern Division; in Chancery Sitting:

William H. Moore, Jr., as Trustee of the Estate of Alfred W. Bannister, a bankrupt, a citizen of the State of California, residing in Los Angeles County in said state, brings this his Bill of Complaint against National Bank of Bakersfield, a banking corporation organized and existing under and by virtue of the laws of the United States, a citizen of the State of California, with its principal place of business in the City of Bakersfield, in Kern County in said state.

And therefore complainant complains and says:

That on the 5th day of May, A. D. 1915, W. C. Wells, Security National Bank of Los Angeles, a corporation, William H. Mead, and National Bank of Pasadena, a corporation, as petitioning creditors filed in the District Court of the United States, in and for the Southern District of California, Southern Division, an involuntary petition in bankruptcy against Alfred W. Bannister, a citizen of the State of California and residing in the City of Los Angeles in Los Angeles County, in said state, praying that the said Alfred W. Bannister be adjudged a bankrupt and that service of said petition, with a subpoena, be made upon him; that thereupon, upon the same day, a subpoena duly issued out of and under the seal of said Court directed to the said Bannister, commanding him to appear and answer the said petition on the 17th day of May, 1915; that thereafter, to-wit, on the 12th day of May, 1915, the

said subpoena with a copy of the said petition was duly served upon the said Bannister at the City of Bakersfield, Kern County, California, and on the 24th day of May, 1915, the said Bannister was, by the aforesaid Court, declared and adjudged a bankrupt.

That thereafter, to-wit: on the 22nd day of June, 1915, at the first meeting of the creditors of said bankrupt, regularly called for such purpose, your complainant herein was duly elected Trustee of said bankrupt estate, and qualified as such Trustee on the same day, and has, at all times since said 22nd day of June, 1915, been, and is now, Trustee of said bankrupt estate acting in the proper and full discharge of his duties of such Trustee.

Your complainant further says that the said bankrupt, Alfred W. Bannister, was, at the time of the filing of the petition hereinbefore mentioned, and for a long time prior thereto, a merchant engaged in the hay and grain business on a large scale in the City of Bakersfield, Kern County, in the State of California, and in the conduct of said business was on the 12th day of January, 1915, and until his adjudication in bankruptcy the owner and in possession of two large warehouses in said City of Bakersfield, one of which is located at 14th and D streets, adjacent to the right-of-way of the Atchison, Topeka and Santa Fe Railway Company, and the other at what is known as "Wible Orchard Siding," adjacent to the right-of-way of the Southern Pacific Company; that on or about the 12th day of January, 1915, the said bankrupt, Alfred W. Bannister, was the owner and in possession of a large stock in trade, then on hand at said warehouses, con-

sisting of corn, barley, oats, wheat, bale ties, alfalfa and other grain; that the following part of said stock in trade was, on or about said 12th day of January, 1915, in said Bannister's warehouse at 14th and D streets, in said City of Bakersfield, California, to-wit:

White Egypt Corn	3345 sacks	410,000 lbs
“ “ “	768 “	96,000 “
Feterita	315 “	37,800 “
R. Barley	750 “	57,750 “
Barley	145 “	14,500 “
Oats	385 “	30,800 “
Shelled corn	95 “	10,000 “
Wheat	74 “	10,360 “
Bale Ties	975 Bales	
Alfalfa	1877 “	236,150 “
Grain Hay	1134 “	140,600 “
Ear corn in crib		142,200 “

And that the following part of said stock in trade was, on or about said 12th day of January, 1915, in said Bannister's warehouse, “Wible Orchard Siding,” in the City of Bakersfield, California, to-wit:

Red Egypt corn	1060 sacks	126,700 lbs
Barley Hay	445 “	52,000 “
Grain Hay	200 tons	400,000 “

That your complainant is informed and believes, and upon such information and belief charges the fact to be, that all of the aforesaid particularly described stock in trade so remained in the warehouses as aforesaid, and in the actual possession, control and custody of the said bankrupt, Alfred W. Bannister, from and after said 12th day of January, 1915, until sold and delivered, as hereinafter set out, to purchasers thereof on

various dates between the 9th day of February, 1915, and the 25th day of June, 1915.

That on said 12th day of January, 1915, said bankrupt, Alfred W. Bannister, executed to the defendant herein, National Bank of Bakersfield, two certain instruments in writing purporting to be chattel mortgages covering all of the above described stock in trade of the said Bannister in said warehouses, and given to secure certain alleged promissory notes of the said Bannister to the said National Bank of Bakersfield, as follows:

One dated November 11, 1914, for twenty-five hundred dollars (\$2500.00); one dated December 1, 1914, for one thousand dollars (\$1,000.00); one dated December 9, 1914, for \$1500.00; one dated December 21, 1914, for fifteen hundred dollars (\$1500.00); one dated January 4, 1915, for fifteen hundred dollars (\$1500.00); one dated January 5, 1915, for one thousand dollars (\$1,000), and one dated January 12, 1915, for fifteen hundred dollars (\$1500.00); copies of said purported chattel mortgages marked "Exhibit A" and "Exhibit B" respectively, are hereto to this bill of complaint attached and made a part hereof.

Your complainant further says that the said purported chattel mortgages "Exhibit A" and "Exhibit B" at the time of their execution were not recorded or registered in the office of the County Recorder of Kern County, wherein the above mentioned stock in trade was located, or anywhere else, nor were they so recorded or registered until on or about the 23rd day of April, 1915; that under the laws of the State of California, said purported chattel mortgages were

prior to said 23rd day of April, 1915, and now are null and void and of no effect as a lien upon said stock and trade so far as creditors of said bankrupt, Alfred W. Bannister, were concerned, and that said laws provide that chattel mortgages are void as against creditors unless recorded in the office of the County Recorder of the county where the property mortgaged is situated. Your complainant further says that the said purported chattel mortgages are null and void and of no effect whatever under and by virtue of the provisions of Section 2955 of the Civil Code of the State of California, which provides that a valid chattel mortgage cannot be made upon the stock in trade of a merchant.

Your complainant further says that at the time of the execution of said purported chattel mortgages, to-wit, January 12, 1915, and also that at the time of the recordation of same, to-wit: April 23, 1915, the said Bannister was insolvent; that said purported mortgages ~~was~~ were both executed and recorded, within four months prior to the filing of the above mentioned involuntary petition in bankruptcy against the said Alfred W. Bannister; that at the time of the said execution of said purported chattel mortgages and also at the time of the said recordation thereof, the said National Bank of Bakersfield had reasonable cause to believe that said mortgages and the enforcement of the lien of said mortgages would effect a preference in its favor over the other creditors of said bankrupt in the same class; and the enforcement of the lien of said purported chattel mortgages, or the recognition thereof as having created valid liens on the property described therein will enable the defendant, National Bank of

Bakersfield, as a creditor of the said bankrupt, Alfred W. Bannister, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Your complainant further says that he is informed and believes and upon such information and belief charges the fact to be, that said defendant National Bank of Bakersfield pretends to hold certain alleged warehouse receipts covering the above described stock in trade and given to it by said bankrupt Alfred W. Bannister as a further and additional security for the aforesaid promissory notes, and by way of pledge of the said stock in trade, but your complainant shows that at the time of receiving the said warehouse receipts from the said Bannister, to-wit, on or subsequent to January 12, 1915, the said National Bank of Bakersfield had reasonable cause to believe that any transfer of title to said property to it, from the said Bannister, as security for or in payment of any debt or obligation of said Bannister, to it, would effect a preference in its favor over the other creditors of said bankrupt in the same class; and that the enforcement of such transfer will enable the defendant, National Bank of Bakersfield, as a creditor of said bankrupt to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class; that at the date of the delivery of said warehouse receipts to said defendant, the said Alfred W. Bannister was insolvent and such delivery of said warehouse receipts was made within four months of the filing of the aforesaid involuntary petition in bankruptcy against the said Alfred W. Bannister.

Your complainant further says that the alleged warehouse receipts were given by the said bankrupt, Alfred W. Bannister, to the said defendant, National Bank of Bakersfield, without any change of possession whatsoever of the aforesaid stock in trade and without any intent whatsoever of changing such possession; and that they were given with intent to defraud creditors of said bankrupt, Alfred W. Bannister; and that the said Bannister was not a warehouseman, nor was he pursuing the calling of a warehouseman in receiving and storing hay, grain or other personal property as a business for profit; and that for each and all the foregoing reasons said warehouse receipts were and are null and void.

Your complainant further says that on various dates between the 9th day of February, 1915, and the 25th day of June, 1915, the said bankrupt, Alfred W. Bannister, acting in conjunction with, and, as your complainant is informed and believes and upon such information and belief charges the fact to be, under the advice and direction of the defendant, National Bank of Bakersfield, sold and delivered to various purchasers for cash all of the above mentioned stock in trade, then and there being in the said warehouses of said Bannister at Bakersfield, California, the proceeds of which the said Bannister paid, or turned over to said defendant, and the said defendant received the same and credited the same in favor of said Bannister, upon the indebtedness evidenced by the aforesaid promissory notes; that the exact dates of sale, and the exact amounts realized, are to your complainant unknown; that all times between said 9th day of February, 1915, and said

25th day of June, 1915, the said bankrupt, Alfred W. Bannister, was insolvent, and at all such times the said defendant, National Bank of Bakersfield, had reasonable cause to believe that said payments of money, so received by it from or on account of the said bankrupt, Alfred W. Bannister, if permitted to stand as valid payments on account of said indebtedness of said Bannister, would effect a preference in its favor over the other creditors of said bankrupt in the same class; that if said payments of moneys so received by said National Bank of Bakersfield, from or on account of said bankrupt, are permitted to be and remain the property of said National Bank of Bakersfield, and not turned over to your complainant as Trustee of said bankrupt estate for the benefit of all the creditors thereof, it will enable the said defendant, as a creditor of said bankrupt, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class; that all of said payments, herein in this paragraph mentioned, were made to and received by said defendant National Bank of Bakersfield within four months prior to the filing of the above mentioned involuntary petition in bankruptcy against the said Alfred W. Bannister.

Your complainant further says that on various dates between the 4th day of January, 1915, and the date of the filing of this bill of complaint, the said bankrupt, Alfred W. Bannister, paid to the said defendant, National Bank of Bakersfield, and the said National Bank of Bakersfield received of and from the said Bannister, divers sums of money, the exact amounts of which, or dates of payment of same, being to your complainant

unknown, for and on account of certain alleged loans of money theretofore made and evidenced by certain of the alleged promissory notes mentioned and set out in "Exhibits A, B, C and D" attached hereto; that at the times of each and all of said payments, the said bankrupt, Alfred W. Bannister, was insolvent; that each and all of said payments were made within four months prior to the filing of the aforesaid involuntary petition in bankruptcy against the said Alfred W. Bannister; that at time of each and all of the said payments to it, the said defendant, National Bank of Bakersfield, have reasonable cause to believe that the payments so made to it would effect a preference in its favor over the other creditors of said bankrupt in the same class; and that the retention of all or any part of the said moneys so paid and the appropriation of the same to its own use, by the said National Bank of Bakersfield, will enable the said defendant, National Bank of Bakersfield, as a creditor of the said bankrupt, Alfred W. Bannister, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Your complainant further says that the aforesaid warehouse located at "Wible Orchard" in said City of Bakersfield, California, consists of a corrugated iron and frame building; that your complainant is informed and believes and upon such information and belief charges the fact to be, that the said building is located upon real property belonging to the Southern Pacific Company, a railroad corporation, at said City of Bakersfield, California, but that the said warehouse building is personal property of said bankrupt's estate

and that complainant has the right to remove the same either now or at some time in the future; that on the 21st day of December, 1914, said bankrupt, Alfred W. Bannister, was the owner and in possession of said warehouse building at "Wible Orchard Siding," and so continued in possession and control of the same down to and including the election and qualification of your complainant as Trustee in Bankruptcy of his estate; that on the 21st day of December, 1914, the said bankrupt, Alfred W. Bannister, executed and delivered to the defendant herein, an instrument in writing purporting to be a chattel mortgage covering aforesaid "Wible Orchard Warehouse" and given to said defendant to secure an alleged promissory note of the same date for fifteen hundred dollars (\$1500.00) and signed by the bankrupt, Alfred W. Bannister, a copy of which purported chattel mortgage, marked "Exhibit C," is hereto annexed and made a part hereof.

Your complainant further says that said purported chattel mortgage on said Wible Orchard Warehouse was not recorded or registered in the office of the County Recorder of Kern County, California, wherein said property is located, nor anywhere else, prior to the 23rd day of April, 1915; that at the time of the execution and delivery of said purported chattel mortgage, and also at the date of the recordation thereof, the said bankrupt, Alfred W. Bannister, was insolvent; that said purported mortgage was recorded within four months prior to the filing of the above mentioned involuntary petition in bankruptcy against the said Alfred W. Bannister; that at the time of the recordation thereof, the said National Bank of Bakersfield had

reasonable cause to believe that the enforcement of the lien of said purported chattel mortgage would effect a preference in its favor over the other creditors of said bankrupt in the same class; and the enforcement of the lien of the said purported chattel mortgage, if held to be valid, will enable the defendant, National Bank of Bakersfield, as a creditor of the said bankrupt, Alfred W. Bannister, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Your complainant further states that on the 5th day of January, 1915, the said bankrupt Alfred W. Bannister was the owner of and in possession of one four-passenger, ~~convertible~~ convertible six, Stutz automobile, 1913 model, series 4 B, car No. 1006, registered No. 27987, located at the said warehouse of the said bankrupt at 14th and D streets in the City of Bakersfield, California; that said Bannister so continued in possession and control of said automobile down to the date of the election and qualification of your complainant as Trustee of his estate in bankruptcy; that on said 5th day of January, 1915, said bankrupt executed and delivered to the defendant herein, an instrument in writing purporting to be a chattel mortgage covering said automobile, and given to secure two alleged promissory notes, one for fifteen hundred dollars (\$1500.00), dated January 4, 1915, and the other for one thousand dollars (\$1,000.00), dated January 5, 1915, both alleged notes purporting to have been executed by the said bankrupt, Alfred W. Bannister, a copy of said purported chattel mortgage, marked "Exhibit D," is hereto annexed and made a part hereof.

Your complainant further says that said purported chattel mortgage on said automobile was not recorded or registered in the office of the County Recorder of Kern County, California, wherein said property is located, nor anywhere else, prior to the 23rd day of April, 1915; that at the time of the execution and delivery of said purported chattel mortgage and also at the date of the recordation thereof, the said bankrupt Alfred W. Bannister was insolvent; that said purported chattel mortgage was executed and delivered and also recorded within four months prior to the filing of the above mentioned involuntary petition in bankruptcy against the said Alfred W. Bannister; that at time of the execution and delivery thereof, and also at the time of the recordation thereof, the said National Bank of Bakersfield had reasonable cause to believe that the enforcement of the lien of said purported chattel mortgage would effect a preference in its favor over the other creditors of said bankrupt in the same class; and the enforcement of the lien of the said purported chattel mortgage if held to be valid, will enable the defendant, National Bank of Bakersfield, as a creditor of the said bankrupt, Alfred W. Bannister, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Your complainant says that he is informed and believes and upon such information and belief charges the fact to be that all of the said purported chattel mortgages, hereinbefore mentioned, were not recorded prior to the 23rd day of April, 1915, by reason and in pursuance of a secret agreement between the said

bankrupt, Alfred W. Bannister, and the defendant National Bank of Bakersfield, to keep said documents from record in order that the said Bannister's financial credit in his said business as a hay and grain merchant might not be impaired or destroyed, and with the intent to prevent action being taken by the then creditors of said Bannister to collect their accounts against him; and complainant further says that by virtue of the said secret agreement between said Bannister and National Bank of Bakersfield, said Bannister was given a false credit and financial standing, whereby and by virtue of which all of his said creditors, save this defendant, National Bank of Bakersfield, were induced either to extend credit to the said Bannister for merchandise purchased by him between said 12th day of January, 1915, and said 23rd day of April, 1915, or to forebear to take action to collect their accounts against him.

Your complainant further says that unless the relief herein prayed for be granted to him by Your Honors, that the assets of the said estate of Alfred W. Bannister will be materially reduced by a large amount, and that the creditors of said estate will be deprived of their right to have applied to the payment of their respective claims, free of all liens and incumbrances, the said property hereinabove mentioned, and also the said moneys so wrongfully and unlawfully received and appropriated by the defendant herein to its own use and benefit.

To the end, therefore, that your complainant may obtain relief in the premises in this Honorable Court,

where alone adequate relief can be afforded, he prays:

1. That the said defendant, National Bank of Bakersfield, be compelled to make full, true, direct and perfect answer to each and every allegation of this bill of complaint according to the best of its knowledge, remembrance, information and belief, but not on oath, answer on oath being expressly waived;

2. That it be adjudged and decreed that all of the hereinabove mentioned chattel mortgages, executed by the said bankrupt Alfred W. Bannister to the said National Bank of Bakersfield, and dated respectively, December 21, 1914, January 5, 1915, January 12, 1915, and January 12, 1915, are null and void and of no effect and that they do not, nor does any one of them, constitute any lien or encumbrance whatsoever upon all or any part of the respective personal property in the said chattel mortgages mentioned; and that they be ordered delivered up to this Honorable Court for cancellation; and that they be cancelled.

3. That the said defendant may be decreed to render to this Court a full, true and perfect account of all moneys whatsoever received by it from or on account of the said bankrupt, Alfred W. Bannister, between the 4th day of January, 1915, and the date of the filing of this bill of complaint; that said defendant be adjudged and decreed to pay to this complainant all of the said moneys so received by it from the said Alfred W. Bannister during said period between the 4th day of January, 1915, and the date of the filing of this bill of complaint.

4. That a reference be made to a special master of

this Court to take such accounting, and report the evidence and his conclusions thereon to this Court.

5. That your complainant may have such other or further relief as equity may require.

6. May it please Your Honors to grant your complainant a Writ of Subpoena, directed to the defendant, National Bank of Bakersfield, and commanding it at a certain time, under a certain penalty, to appear before Your Honors, in this Court, then and there to answer unto this bill of complaint, and to abide by and perform such decree as the Court may make in the premises.

WM. H. MOORE, JR.,

As Trustee of the Estate of Alfred W. Bannister,
Bankrupt.

ERNEST U. SCHROETER,

LUCIUS K. CHASE,

Attorneys for Complainant.

State of California,

Los Angeles County,—ss.

William H. Moore, Jr., the Complainant in the foregoing bill named, being duly sworn, says that he has read the foregoing bill and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be on information and belief, and as to those matters he believes them to be true.

WM. H. MOORE, JR.

Subscribed and sworn to before me this 12th day of
July, 1915.

[Seal]

M. LUCILE ADAMS,

Notary Public in and for the County of Los Angeles,
State of California.

EXHIBIT "A."

THIS MORTGAGE, made the 12th day of January, 1915, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee.

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit: the Bannister Warehouse, corner of 14th & D Sts., Santa Fe Yards, Bakersfield, California.

White

Egypt Corn	3345	Sacks	410,000"	\$30.00	\$6,000.00
"	"	"	768	" 96,000"	26.00 1,248.00
Feterita	315	"	37,800"	26.00	491.40
R. Barley	750	"	57,750"	28.00	808.50
Barley	145	"	14,500"	26.00	188.50
Oats	385	"	30,800"	28.00	431.20
Shelled Corn	95	"	10,000"	30.00	150.00
Wheat	74	"	10,360"	30.00	155.40
Bale Ties	975	Bales		1.15	1,120.00
Alfalfa	1877	"	236,150"	7.00	826.50
Grain Hay	1134	"	140,600"	8.00	562.40
Ear Corn in					
Crib			142,200"	22.00	1,562.00

Wible Warehouse

Red Egypt

Corn	1060	126,700	26.00	1,647.10
Barley Hay	445	52,000	8.00	208.00

Total \$15,399.00

Copy

No.

As security for the payment to the said mortgagee of 7 promissory notes in the words and figures following, to-wit:

\$2500.00 Bakersfield, California, Nov. 11th, 1914.

Sixty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of Twenty-five hundred and no/100 Dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bearing like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case an action is commenced on this note, I agree to pay a reasonable attorney's fee thereon.

Signed A. W. BANNISTER.

Address.

50c stamps cancelled

No.

\$1000.00 Bakersfield, California, Dec. 1st 1914

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of One thousand and no/100 Dollars, with interest thereon at the rate of eight per cent per

annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

Signed A. W. BANNISTER.

Address.....

Stamps 20c cancelled

Copy

No.....

\$1500.00 Bakersfield, California, Dec. 9th, 1914.

Thirty Days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of Fifteen hundred and no/100 Dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address.....

Stamps cancelled 30c

\$1500.00 Bakersfield, California, Dec. 21st, 1914.

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of Fifteen hundred and no/100 Dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address.....

Stamps cancelled 30c

Copy

\$1500.00 Bakersfield, California, Jany. 4th, 1915.

Sixty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of Fifteen hundred and no/100 Dollars, with interest thereon at the rate of eight per cent per

annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address.....

Stamps cancelled 30c

No.....

\$1000.00 Bakersfield, California, Jan. 5th, 1915.

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of One thousand and no/100 Dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address.....

Stamps cancelled 20c

No. 888

\$1500.00 Bakersfield, California, Jan. 12, 1915.

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of Fifteen hundred and no/100 Dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address.....

Stamps cancelled 30c

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

ALFRED W. BANNISTER.

State of California,
County of Kern,—ss.

On this 12th day of January, in the year one thousand nine hundred and fifteen, before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

[Seal] C. H. FRANEY,
Notary Public in and for the County of Kern, State
of California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says that said mortgage is made on good faith and without any design to hinder, delay or defraud any creditor or creditors.

ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 12th day of January, 1915.

(Seal) C. H. FRANEY,
Notary Public in and for said County and State

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says that he is an officer of The National Bank of Bakersfield, the mortgage... named in the foregoing mortgage, to-wit, the.....Cashier of said bank, and makes this affidavit on behalf of said mortgagee. That the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

J. K. RUSSELL.

Subscribed and sworn to before me, this 12th day of January, 1915.

(Seal)

C. H. FRANEY,

Notary Public in and for said County and State.

Filed for record at the request of National Bank of Bakersfield, Apr. 23, 1915, at 15 min. past 4 o'clock p. m., and recorded in Vol. 29 of Chat. Mtgs., page 267, Kern County Records. Chas. A. Lee, Recorder; by Fred W. Lee, Deputy Recorder.

EXHIBIT "B."

THIS MORTGAGE, made the 12th day of January, 1915, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation merchant mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee.

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit:

Two hundred tons of grain hay located at Bannister's Warehouse, Wible Siding, Kern County, California, as security for the payment to the said mortgagee

of a promissory note, in the words and figures following, to-wit:

No.....

\$1500.00 Bakersfield, California, Jan. 12th, 1915.

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) ALFRED W. BANNISTER.

Address.....

Stamps cancelled 30c

It Is Also Agreed that if the said mortgagor should fail to make any payment in said promissory note provided, then said mortgagee shall have the right to immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereto set his hand and seal, the day and year first above written.

ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 12th day of January, in the year one thousand nine hundred and fifteen before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) C. H. FRANEY,
Notary Public in and for the County of Kern, State
of California.
State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 12th day of January, 1915.

(Seal) C. H. FRANEY,
Notary Public in and for said County and State.
State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit,

the.....Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

J. K. RUSSELL.

Subscribed and sworn to before me, this 12th day of January, 1915.

(Seal)

C. H. FRANEY,

Notary Public in and for said County and State.

Recorded April 23, 1915, in Book 29 of Chattel Mortgages, page 263, records of Kern County, California.

EXHIBIT "C."

THIS MORTGAGE, made the 21st day of December, 1914, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation merchant mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee.

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit:

On a corrugated Iron & Frame Warehouse Building located in Southern Pacific Company's Land Siding at Wible Orchard Siding, Kern County, California, as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to-wit:

No.....

\$1500.00 Bakersfield, California, December 21st, 1914.

Ninety days after date, for value received, I promise

to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note I agree to pay a reasonable attorney's fee therein.

(Signed) ALFRED W. BANNISTER.

Address.....

Stamps cancelled 30c.

It Is Also Agreed that if said mortgagor shall fail to make any payment in said promissory note provided, the said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 21st day of December, in the year one thousand nine hundred and fourteen, before me, C. H.

Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) C. H. FRANEY,
Notary Public in and for the County of Kern, State
of California.
State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 21st day of December, 1914.

(Seal) C. H. FRANEY,
Notary Public in and for the said County and State.
State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit, the.....Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any

design to hinder, delay or defraud any creditor or creditors.

J. K. RUSSELL.

Subscribed and sworn to before me, this 21st day of December, 1914.

(Seal)

C. H. FRANEY,

Notary Public in and for the said County and State.

Filed for record at the request of National Bank of Bakersfield, Apr. 23, 1915, at 15 min. past 4 o'clock p. m., and recorded in Vol. 29 of Chat. Mtgs., page 265, Kern County Records. Chas. A. Lee, Recorder; by Fred W. Lee, Deputy Recorder.

EXHIBIT "D."

THIS MORTGAGE, made the 5th day of January, 1915, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee.

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit:

One four passenger convertible Six Stutz 1913 model, Series 4B, Car No. 1006, Register No. 27987, located on property of A. W. Bannister known as Bannister's Warehouse Fourteenth and D streets, as security for the payment to the said mortgagee of 2 promissory notes, in the words and figures following, to-wit:

\$1500.00 Bakersfield, California, Jan. 4th, 1915.

Sixty days after date, for value received, I promise

to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) ALFRED W. BANNISTER.

Address.....

Cancelled stamps 30c

No.....

\$1000.00 Bakersfield, California, Jan. 5th, 1915.

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of one thousand and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any part not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note I agree to pay a reasonable attorney's fee therein.

(Signed) ALFRED W. BANNISTER.

Address.....

Cancelled stamps 20c

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 5th day of January, in the year one thousand nine hundred and fifteen, before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal)

C. H. FRANEY,
Notary Public in and for the County of Kern, State
of California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 5th day of January, 1915.

(Seal)

C. H. FRANEY,

Notary Public in and for said County and State.
State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit, the.....Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

J. K. RUSSELL.

Subscribed and sworn to before me, this 5th day of January, 1915.

(Seal)

C. H. FRANEY,

Notary Public in and for said County and State.

Filed for record at request of National Bank of Bakersfield, Apr. 23, 1915, at 15 min. past 4 o'clock p. m., and recorded in Vol. 29 of Chat. Mtgs., page 272, Kern County Records. Chas. A. Lee, Recorder; by Fred W. Lee, Deputy Recorder.

[Endorsed]: No. B 94 Eq. Dept. In the District Court of the United States of America, in and for the Southern District of California, Southern Division. William H. Moore, Jr., as trustee of the estate of Alfred W. Bannister, a bankrupt, Complainant, vs. National Bank of Bakersfield, a corporation organized and existing under and by virtue of the laws of the U. S., Defendants. No. In Equity. Bill of Complaint. Filed Jul. 13, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. Lucius K. Chase, E. U. Schroetter, Attorneys for Complainant. 441-443 Title Insurance Building, Los Angeles, California.

UNITED STATES OF AMERICA.

*District Court of the United States, Southern District
of California, Southern Division.*

Subpoena.

In Equity.

The President of the United States of America, Greeting: To National Bank of Bakersfield, a Corporation.

You Are Hereby Commanded, That you be and appear in said District Court of the United States aforesaid, at the court room in Los Angeles, California, on or before the twentieth day, excluding the day of service, after service of this subpoena upon you, to answer a Bill of Complaint exhibited against you in said Court by William H. Moore, Jr., as Trustee of the Estate of Alfred W. Bannister, a bankrupt, who is a citizen of the State of California, and to do and receive

what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, The Honorable OSCAR A. TRIPPET, Judge of the District Court of the United States, this 13th day of July, in the year of our Lord one thousand nine hundred and fifteen and of our Independence the one hundred and fortieth.

[Seal] WM. M. VAN DYKE, Clerk.

By R. S. Zimmerman, Deputy Clerk.

Memorandum Pursuant to Rule 12, of Rules of Practice for the Courts of Equity of the United States, Promulgated by the Supreme Court, November 4, 1912.

On or before the twentieth day after service of the subpoena, excluding the day thereof, the defendant is required to file his answer or other defense in the Clerk's office; otherwise the Bill may be taken *pro confesso*.

WM. M. VAN DYKE, Clerk.

By R. S. Zimmerman, Deputy Clerk.

United States Marshal's Office,
Southern District of California,—ss.

I Hereby Certify, that I received the within writ on the 15th day of July, 1915, and personally served the same on the 16th day of July, 1915, on National Bank of Bakersfield, a Corporation, by delivering to and leaving with C. L. Chafin, President of The National Bank of Bakersfield, a corporation, said defendant named

therein, personally, at the County of Kern, City of Bakersfield, in said district, a copy thereof.

Fresno, July 16th, 1915.

C. T. WALTON,
U. S. Marshal.
By S. J. Shannon,
Deputy.

To the Marshal of the United States for the Southern District of California:

Pursuant to Rule 12, the within subpoena is returnable into the Clerk's office twenty days from the issuing thereof.

Subpoena issued July 13th, 1915.

WM. M. VAN DYKE, Clerk.

By R. S. Zimmerman, Deputy Clerk.

Received Jul. 13, 1915, m., in U. S. Marshal's office, Los Angeles, Cal.

[Endorsed]: Marshal's Civil Docket No. 2718. No. B 94 Equity. U. S. District Court, Southern District of California, Southern Division. In Equity. William H. Moore, Jr., Trustee, etc., vs. National Bank of Bakersfield, a Corporation. Subpoena. Filed Jul. 23, 1915. Wm. M. Van Dyke, Clerk; by Chas. N. Williams, Deputy Clerk, Eq. R. B-16.

In Equity. No. B 94.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

WILLIAM H. MOORE, Jr., as Trustee of the Estate
of Alfred W. Bannister, a Bankrupt,
Complainant.

vs.

NATIONAL BANK OF BAKERSFIELD, a Corpora-
tion Organized and Existing Under and by
Virtue of the Laws of the United States,
Defendant.

Answer to Bill of Complaint.

Now comes the defendant, National Bank of Bakersfield, and answering the Bill of Complaint filed herein by William H. Moore, Jr., as Trustee of the Estate of Alfred W. Bannister, a bankrupt, denies that said Alfred W. Bannister was, at the time of the filing of the involuntary petition in bankruptcy referred to in said Complaint. or for a long time prior thereto had been, a merchant. Defendant admits that on the 12th day of January, 1915, the property described in complainant's Bill of Complaint was owned by said Bannister and was situated as in said complaint described; but denies that all or any portion of said property remained in the said warehouses or in the actual possession or under the control or in the custody of the said Alfred W. Bannister after the 23rd day of April, 1915, at which time all of said property was taken possession of by this defendant in the manner and under the circumstances in this Answer hereinafter fully set forth.

Defendant admits that on the 12th day of January, 1915, said Alfred W. Bannister executed to defendant herein each of the instruments referred to in said Bill

of Complaint as having been executed by said Bannister to defendant on said date, and described therein as Exhibit "A" and Exhibit "B," respectively, but defendant alleges that each of said instruments was executed under the circumstances and for the purposes herein-after in this Answer fully set forth and not otherwise.

Defendant denies that under the laws of the State of California, or otherwise, either of said instruments were, prior to said 23rd day of April, 1915, or at any other time, null and void, or null or void, or of no effect as a lien upon the property in each of said instruments described, respectively, so far as the creditors of said Alfred W. Bannister are concerned, or that the laws of the State of California provide that chattel mortgages are void as against creditors unless recorded in the office of the County Recorder of the county where the property is situated. Defendant denies that either of said chattel mortgages are null or void or of no effect under or by virtue of the provisions of Section 2955 of the Civil Code of the State of California, or under or by virtue of the provisions of any other section of any code of this state.

Defendant denies that on January 12, 1915, or on April 23, 1915, the said Bannister was insolvent.

Defendant denies that at the time of the execution of either of said chattel mortgages or at the time of the recordation thereof defendant had reasonable, or any cause to believe that said mortgages, or either of them, or the enforcement of the lien of said mortgages, or either of said mortgages, would effect a preference in its favor over the other creditors of said bankrupt in the same class, or that the enforcement of the lien

of said mortgages, or either of them, or the recognition thereof as valid liens on the property described therein, or in either of said mortgages, will enable the defendant, as a creditor of said Alfred W. Bannister, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Defendant denies that it holds or pretends to hold alleged warehouse receipts covering the above described stock in trade, or any part thereof, as alleged in said Bill of Complaint, or otherwise; and defendant denies that on or subsequent to January 12, 1915, defendant had reasonable, or any, cause to believe that a transfer of title to said or any portion of said property to it from the said Bannister, as security for or in payment of any debt or obligation of said Bannister to it, would effect a preference in its favor over the other creditors of said bankrupt in the same class. Defendant denies that said Alfred W. Bannister delivered any warehouse receipts to defendant as in said Bill of Complaint alleged, or otherwise, or that said Alfred W. Bannister was insolvent at the time it is alleged said warehouse receipts were so delivered.

Defendant denies that all or any portion of the property described in each of said instruments was sold in any manner other than as in this Answer hereinafter more particularly set forth. And defendant denies that at all times between the 9th day of February, 1915, and the 25th day of June, 1915, said Alfred W. Bannister was insolvent, or that at all of said time, or any of said time, up to the filing of

the said involuntary petition in bankruptcy against the said Alfred W. Bannister this defendant had reasonable, or any, cause to believe, or did believe, that any payments of money received by it from or on account of said bankrupt, would, if permitted to stand as valid payments on account of said indebtedness referred to in said Bill of Complaint, effect a preference in defendant's favor over other creditors of said bankrupt in the same class.

Defendant denies that if the payments referred to in said Bill of Complaint are permitted to be and remain the property of this defendant it will result that this defendant, as a creditor of said bankrupt, will obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Defendant denies that between the 4th day of January, 1915, and the date of the filing of this Bill of Complaint said Alfred W. Bannister paid to defendant diverse or any sums of money other or different than as is in this Answer hereinafter fully set forth, or that at the time each or any of said payments said Alfred W. Bannister was insolvent, or that at the time of each or any of said payments to it defendant had reasonable or any cause to believe that the payments so made to it would effect a preference in its favor over other creditors of said bankrupt in the same class; and defendant denies that the retention of all or any part of the money so paid or the appropriation of the same to its own use by defendant will enable defendant to obtain a greater percentage of its debt from said

bankrupt's estate than any other creditor or creditors of the same class.

Defendant denies that on the 21st day of December, 1915, or at the time of the execution or delivery of the chattel mortgage in said Bill of Complaint referred to as Exhibit "C," or at the date of the recordation thereof, to-wit, April 23, 1915, said Alfred W. Bannister was insolvent, or that at the time of the recordation of said chattel mortgage this defendant had reasonable or any cause to believe that the enforcement of the lien of said chattel mortgage would effect a preference in its favor over the other creditors of said bankrupt in the same class, or that the enforcement of the lien of said mortgage will enable the defendant to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Defendant denies that at the time of the execution or delivery of the chattel mortgage referred to in said Bill of Complaint as Exhibit "D," or at the date of the recordation thereof as in said bill alleged, said Alfred W. Bannister was insolvent, and defendant denies that said chattel mortgage was executed and delivered, or executed or delivered, within four months prior to the filing of the involuntary petition of bankruptcy referred to in said Bill of Complaint, and that at the time of the execution and delivery, or either thereof, or at the time of the recordation thereof, defendant had reasonable, or any, cause to believe that the enforcement of the lien of said chattel mortgage would effect a preference in its favor over the other creditors of said bankrupt in the same class, or that the enforce-

ment of the lien of said mortgage will enable defendant to obtain a greater percentage of its debt from the estate of said Bannister than any other creditor or creditors of the same class.

Defendant denies that all or any of the chattel mortgages referred to in said Bill of Complaint were not recorded prior to the 23rd day of April, 1915, by reason or in pursuance of a secret or any agreement between said Alfred W. Bannister and this defendant to keep said documents from record in order that the said Bannister's financial credit in his business might not be impaired or destroyed or otherwise, or with the intent to prevent action being taken by the then creditors of said Bannister to collect their, or any of their, accounts against him. And defendant denies that by virtue of any agreement between the said Bannister and this defendant said Bannister was given a false or any credit or financial standing whereby or by virtue of which all or any of his creditors were induced either to extend credit to the said Bannister for merchandise purchased by him between the 12th day of January, 1915, and the 23rd day of April, 1915, or at any other time, or to forbear to take action to collect their accounts, or any of their accounts, against him. Defendant denies that unless the relief prayed for in complainant's Bill of Complaint be granted that the assets of the estate of Alfred W. Bannister will be materially, or at all, reduced by a large or any amount; or that the creditors of said estate will be deprived of their right to have applied to the payment of their respective claims the property in said Bill of Complaint mentioned.

Further answering said Bill of Complaint defendant alleges that on the 11th day of November, 1914, the said Alfred W. Bannister, referred to in complainant's Bill of Complaint, stated to said defendant that he had agreed with one Weyand to purchase all the corn then on said Weyand's ranch near Bakersfield, in said Kern County, and had agreed with one Barnett to purchase all the corn on said Barnett's ranch near Bakersfield, in said county, and had agreed with one Webster to purchase from him all the hay on said Webster's ranch near Bakersfield, in said county, and needed the sum of \$2500.00 in order to enable him to comply with each of said agreements; and he then stated to said defendant that he, said Bannister, then had in his warehouse at the corner of Fourteenth and D streets, Santa Fe Yards, Bakersfield, 60 tons of oats, and that if defendant would advance to him said sum of \$2500.00 he would use the same in performance of his agreement to purchase said corn and hay, and would execute and deliver to defendant his promissory note for \$2500.00 payable sixty days thereafter, and execute and deliver to defendant a chattel mortgage upon said 60 tons of oats in said warehouse and upon all corn in said Weyand's ranch, all corn on said Barnett's ranch, and all hay on said Webster's ranch, and that within a reasonable time thereafter he would cause all of said corn and hay so mortgaged to be removed from each of said ranches to said warehouse; thereupon defendant delivered to said Bannister the sum of \$2500.00, in gold coin of the United States, and said Bannister then and there executed and delivered to

defendant his promissory note in words and figures as follows, to-wit:

“\$2500.00 Bakersfield, California, Nov. 11th, 1914.

Sixty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of twenty-five hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Cancelled stamps 50 cents.

Address.....”;

and also a chattel mortgage upon 60 tons of oats in said Bannister's warehouse, corner of Fourteenth and D streets, Santa Fe Yards, Bakersfield, California; all corn on Weyand's ranch, all corn on Barnett's ranch, all hay on Webster's ranch, being the ranches hereinabove referred to, securing the payment of said promissory note according to its terms; which said chattel mortgage is hereunto attached, marked Exhibit “A,” and made a part of this Answer.

Within a reasonable time thereafter said Bannister

caused all corn and hay described in said chattel mortgage to be removed from said ranches and stored in his said warehouse at the corner of Fourteenth and D streets, Santa Fe Yards, Bakersfield, California.

On December 1, 1914, said Bannister requested of defendant to loan to him \$1,000.00 and agreed, in consideration thereof, to execute his promissory note therefor, payable ninety days thereafter, and a chattel mortgage upon 55 tons of Egyptian corn then situated in said Bannister's warehouse at the corner of Fourteenth and D streets, Santa Fe Yards, Bakersfield, California; thereupon and on said day defendant loaned to said Bannister the sum of \$1000.00, in gold coin of the United States, and said Bannister then and there executed and delivered to defendant his promissory note in words and figures as follows, to-wit:

"\$1000.00 Bakersfield, California, Dec. 1st, 1914.

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of one thousand and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Stamps cancelled 20 cents.

Address.....”;

and also a chattel mortgage upon 55 tons of Egyptian corn then in said Bannister's warehouse at the corner of Fourteenth and D streets, in Bakersfield, California, securing the payment of said note according to its terms, a copy of which said chattel mortgage is hereunto attached, marked Exhibit “B,” and made a part of this Answer.

On the 9th day of December, 1914, said Alfred W. Bannister stated to said defendant that he had agreed with one Gregg to purchase all the alfalfa hay on said Gregg's ranch near Bakersfield, in said Kern County, and had agreed with one Garrett to purchase all the barley hay on said Garrett's ranch near Bakersfield, said Kern County, and had agreed with one Machada to purchase all the barley hay on said Machada's ranch near Bakersfield, in said Kern County, and needed the sum of \$1500.00 in order to enable him to comply with each of said agreements; he then stated to said defendant that he, said Bannister, then had in his warehouse at the corner of Fourteenth and D streets, Santa Fe Yards, Bakersfield, 20 tons of barley and 20 tons of corn unencumbered by chattel mortgage, or otherwise, and that if defendant would advance to him the sum of \$1500.00 he would use the same in performance of his said agreements to purchase said hay, and would execute and deliver to defendant his promissory note for \$1500.00, payable

thirty days thereafter, and execute and deliver to defendant a chattel mortgage upon said 20 tons of barley and said 20 tons of corn in said warehouse and upon all alfalfa hay on said Gregg's ranch, all barley hay on said Garrett's ranch, and all barley hay on said Machada's ranch, and within a reasonable time thereafter he would cause all of said hay so mortgaged to be removed from each of said ranches to said warehouse. Thereupon defendant delivered to said Bannister the sum of \$1500.00, gold coin of the United States, and said Bannister then and there executed and delivered to defendant his promissory note in words and figures as follows, to-wit:

"\$1500.00 Bakersfield, California, Dec. 9th, 1914.

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly, and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Cancelled stamps 30 cents.

Address.....";

and also a chattel mortgage upon the said 20 tons of barley and said 20 tons of corn in said warehouse and all alfalfa hay on Gregg's ranch, all barley hay on Garrett's ranch and all barley hay on Machada's ranch, being the ranches hereinabove referred to, securing the payment of said promissory note according to its terms, a copy of which said chattel mortgage is hereunto attached, marked Exhibit "C," and made a part of this Answer.

Within a reasonable time thereafter said Bannister caused all of said hay described in said chattel mortgage to be removed from said ranches and stored in said warehouse.

On December 21, 1914, the said Alfred W. Bannister stated to said defendant that he had agreed with one Heinrich to purchase all corn and oats then on said Heinrich's ranch near Bakersfield, in said Kern County, and had agreed with one Randolph to purchase all corn on said Randolph's ranch near Bakersfield, in said county, and had agreed with one Gulley to purchase all corn and oat hay on said Gulley's ranch near Bakersfield, in said county, and needed the sum of \$1500.00 in order to enable him to comply with each of said agreements: and he then stated to defendant that if defendant would advance to him said sum of \$1500.00 he would use the same in performance of his said agreements to purchase said corn, oats and oat hay and would execute and deliver to defendant his promissory note for \$1500.00, payable ninety days thereafter, and execute and deliver to defendant a chattel mortgage upon all corn and oats on said Heinrich's ranch, upon all corn on said Randolph's ranch,

and upon all oat hay on Gulley's ranch, and that within a reasonable time thereafter he would cause all of said corn and hay so mortgaged to be removed from each of said ranches to said warehouse; thereupon defendant delivered to said Bannister the sum of \$1500.00, gold coin of the United States, and said Bannister then and there executed and delivered to defendant his promissory note in words and figures as follows, to-wit:

"\$1500.00 Bakersfield, California, Dec. 21st, 1914.

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of.....per cent per.....from date, until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Stamps cancelled 30 cents.

Address.....";

and also a chattel mortgage upon all corn and oats on Heinrich's ranch, all corn on Randolph's ranch, and all corn and oat hay on Gulley's ranch, being the

ranches hereinabove referred to, securing the payment of said promissory note according to its terms, a copy of which said chattel mortgage is hereunto attached, marked Exhibit "D," and made a part of this Answer.

Within a reasonable time thereafter said Bannister caused all of said corn, oats and oat hay described in said chattel mortgage to be removed from said ranches and stored in said warehouse.

On January 4, 1915, said Alfred W. Bannister requested of defendant that it loan him the sum of \$1500.00, and stated to defendant that if it would do so he, said Bannister, would execute to defendant his promissory note for said sum, due sixty days thereafter, and also a chattel mortgage upon 60 tons of corn, 20 tons of alfalfa hay, and 50 tons of barley hay then situated in Bannister's warehouse at Wible Siding, Kern County, California, securing the payment of said note according to its terms. That thereupon defendant loaned to said Bannister \$1500.00 in gold coin of the United States, in consideration of which said Bannister executed and delivered to defendant his promissory note in words and figures as follows, to-wit:

"\$1500.00 Bakersfield, California, Jany 4th, 1915.

Sixty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest

not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note, and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Cancelled stamps 30 cents.

Address:.....";

and also a chattel mortgage upon 60 tons of corn, 20 tons of alfalfa hay, and 50 tons of barley hay in Bannister's warehouse, Wible Siding, Kern County, California, securing the payment of said promissory note according to its terms, a copy of which said chattel mortgage is hereunto attached marked Exhibit "E" and made a part of this Answer.

On January 5, 1915, said Alfred W. Bannister requested defendant to loan him the sum of \$1000.00 and agreed, in consideration thereof, to execute and deliver to defendant his promissory note for \$1000.00, payable thirty days thereafter, and execute and deliver to defendant a chattel mortgage upon 70 tons of Egyptian corn then in Bannister's warehouse, corner Fourteenth and D streets, Santa Fe Yards, Bakersfield, California, securing the payment of said note according to its terms. Thereupon defendant, on said day, loaned to said Bannister the sum of \$1000.00, in gold coin of the United States, in consideration of which said Bannister then and there executed and delivered to defendant his promissory note in words and figures as follows, to-wit:

“\$1000.00 Bakersfield, California, Jany 5th, 1915.

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of one thousand and no/100 dollars, with interest thereon at the rate of eight percent per annum from date until paid, interest payable monthly and, if not so paid to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Cancelled stamps 20 cents.

Address.....”;

and a chattel mortgage upon said 70 tons of Egyptian corn then situated in Bannister's warehouse, corner of Fourteenth and D streets, Santa Fe Yards, Bakersfield, California, securing the payment of said note according to its terms, a copy of which said chattel mortgage is attached hereto marked Exhibit “F” and made a part of this Answer.

At the same time said Bannister executed and delivered to defendant a chattel mortgage upon one four-passenger, convertible, Six Stutz 1913 model automobile, series 4B, car No. 1006, Register No. 27987, as additional security for the payment of said note for \$1000.00 executed January 4, 1915, and said note for

\$1500.00 executed January 5, 1915, hereinabove set forth, a copy of which said chattel mortgage is set forth in plaintiff's Bill of Complaint and described as Exhibit "D," which is hereby referred to and made a part of this Answer.

On January 12, 1915, said Alfred W. Bannister requested of defendant that it loan to him the sum of \$1500.00; defendant stated to said Bannister that it would loan him said sum of \$1500.00, to be paid ninety days thereafter, provided the said Bannister would then execute and deliver to defendant a chattel mortgage upon all hay and grain then in the warehouse of said Bannister, one situated at the corner of Fourteenth and D streets, Santa Fe Yards, Bakersfield, California, and the other at Wible Siding, said Kern County, securing the payment of each of the promissory notes hereinabove set forth in addition to the promissory note of \$1500.00 to be executed for the sum then requested to be loaned to him by defendant; that said Bannister agreed so to do, and defendant then and on said date loaned to said Alfred W. Bannister the sum of \$1500.00 and thereupon said Bannister executed and delivered to defendant his promissory note in words and figures as follows, to-wit:

"\$1500.00 Bakersfield, California, Jany 12th, 1915.

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to

become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Cancelled stamps 30 cents.

Address.....";

and two certain chattel mortgages, one of which is upon 200 tons of grain hay located at Bannister's warehouse, Wible Siding, Kern County, California, which said chattel mortgage is hereto attached, marked Exhibit "G," and made a part of this Answer, and the other of which is upon 3345 sacks of white Egyptian corn, 768 sacks of red Egyptian corn, 315 sacks of feterita, 750 sacks R. barley, 145 sacks barley, 385 sacks oats, 95 sacks shelled corn, 74 sacks wheat, 975 bales of bale ties. 1877 bales alfalfa, 1135 bales grain hay, 142,400 pounds ear corn in the crib, all of which was then situated in Bannister's warehouse, corner Fourteenth and D streets, Santa Fe Yards, Bakersfield, and 1060 sacks red Egyptian corn and 445 bales of barley hay then situated in said Bannister's warehouse at Wible Siding, in said Kern County; a copy of which said chattel mortgage is hereunto attached, marked Exhibit "H," and made a part of this Answer. That all of the property described in each of said chattel mortgages, Exhibits "G" and "H," respectively, except

the 975 bales of bale ties and the 315 sacks of feterita included in Exhibit "H," was, at said time, covered by one or the other of the chattel mortgages hereinabove referred to as Exhibits "A" to "F," inclusive.

At the time each and all of the chattel mortgages hereinabove set forth and described were executed and delivered by said Bannister to defendant as herein alleged, it was understood and agreed between said Bannister and said defendant that if said promissory notes described in each of said chattel mortgages were not paid by said Bannister according to their terms, defendant might take possession of the property so mortgaged and sell the same at private sale and apply the proceeds thereof in payment of each and all of said promissory notes described in each of said chattel mortgages. That on or about the 23rd day of April, 1915, defendant took possession of all of the property described in each and all of said chattel mortgages and thereafter sold the same, realizing from such sale, on the 5th day of May, 1915, the sum of \$500.00; on the 6th day of May, 1915, the sum of \$500.00; on the 10th day of May, 1915, the sum of \$1500.00; on the 11th day of May, 1915, the sum of \$2500.00; on the 14th day of May, 1915, the sum of \$500.00; on the 17th day of May, 1915, the sum of \$300.00; on the 19th day of May, 1915, the sum of \$1250.00; on the 20th day of May, 1915, the sum of \$700.00; on the 22nd day of May, 1915, the sum of \$450.00; on the first day of June, 1915, the sum of \$500.00; and on the 24th day of June, 1915, the sum of \$181.13. Between the 10th day of February, 1915, and the 4th day of May, 1915, said Bannister paid to

defendant, on account of said notes, in addition to the sums realized from the sale of said property last hereinabove mentioned, the sum of \$1800.00.

None of the chattel mortgages hereinabove referred to and described were recorded except the chattel mortgage described as Exhibit "H," which said chattel mortgage was recorded in the Recorder's office of Kern County on the 23rd day of April, 1915. There was no agreement between said Bannister and defendant that the chattel mortgages hereinabove referred to, or either of them, should not be placed of record, and the same were not placed of record by defendant solely for the reason that defendant was informed and believed that under the laws of California each and all of said chattel mortgages created valid and enforceable liens upon the property described in each thereof independent of the recordation of said mortgages. The money received from the sale of said property, as hereinabove alleged, was credited by defendant upon said notes as it was received by it, as hereinabove alleged.

WHEREFORE, defendant asks that plaintiff take nothing by the said action; that said bill be dismissed, and that it have its costs herein expended.

W. N. GOODWIN and
HUNSAKER & BRITT,
Attorneys for Defendant.

EXHIBIT A.

THIS MORTGAGE, made the 11th day of November, 1914, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation

....., mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to wit:

At Bannister's Warehouse, corner of 14th and D Sts., Santa Fe Yards, Bakersfield, California, sixty tons of oats.

All corn on Weyand's Ranch.

“ “ “ Barnett's Ranch.

“ hay “ Webster's Ranch.

All located in Kern County, California.

as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to wit:

\$2500.00

Bakersfield, California, Nov. 11th 1914. No....

Sixty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of twenty five hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Cancelled Stamps

50 cents

It is also agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 11th day of November, in the year one thousand nine hundred and fourteen, before me, C. H. Franey, a Notary Public in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) (Signed) C. H. FRANEY,

Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me this 11th day of November, 1914.

(Signed) C. H. FRANEY,

Notary Public in and for Said County and State.

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to wit, the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me, this 11th day of November, 1914.

(Signed) C. H. FRANEY,

Notary Public in and for Said County and State.

EXHIBIT B.

THIS MORTGAGE, made the 1st day of December, 1914, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation,

mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to wit:

At Bannister's Warehouse, corner 14th and D Sts., Santa Fe Yards, Bakersfield, California.

Fifty-five tons of Egyptian corn.
as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to wit:

\$1000.00

Bakersfield, California, Dec. 1st 1914 No....

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of one thousand and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER

Address Stamps Cancelled

20 cents

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 1st day of December, in the year one thousand nine hundred and fourteen, before me, C. H. Franey, a Notary Public in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) (Signed) C. H. FRANEY,
Notary Public in and for the County of Kern, State of
California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and

without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me this 1st day of Dec., 1914.

(Signed) C. H. FRANEY,

Notary Public in and for Said County and State.

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to wit, the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me this 1st day of Dec., 1914.

(Signed) C. H. FRANEY,

Notary Public in and for Said County and State.

EXHIBIT C.

THIS MORTGAGE, made the 9th day of December, 1914, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation, mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth, That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit:

Twenty tons of barley and twenty tons of corn, at Bannister's Warehouse, 14th and D Sts., Santa Fe Yards, Bakersfield, California.

All alfalfa hay on Gregg's Ranch.

“ barley “ “ Garrett's Ranch.

“ “ “ “ Machada's Ranch.

All located in Kern County, California.

as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to-wit:

\$1500.00

Bakersfield, California, Dec. 9th 1914 No. . . .

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Cancelled Stamps

30 cents

It Is Also Agreed that if the said mortgagor shall

fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 9th day of December, in the year one thousand nine hundred and fourteen, before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) (Signed) C. H. FRANEY,
Notary Public in and for the County of Kern, State of
California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith

and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 9th day of December, 1914.

(Signed) C. H. FRANEY,

Notary Public in and for Said County and State.

State of California,

County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit, the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me, this 9th day of December, 1914.

(Signed) C. H. FRANEY,

Notary Public in and for Said County and State.

EXHIBIT D.

THIS MORTGAGE, made the 21st day of December, 1914, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation, mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth: That the said mortgagor mortgages to

said mortgagee all that certain personal property situated and described as follows, to-wit:

All corn and oats on Heinrich's Ranch,

“ “ “ Randolph's “

“ “ and oat hay on Gulley's “

All located in Kern County, California,

as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to-wit:

\$1500.00

Bakersfield, California, Dec. 21st 1914 No....

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of per cent per from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Stamps Cancelled

30 cents.

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note pro-

vided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 21st day of December, in the year one thousand nine hundred and fourteen, before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) (Signed) C. H. FRANEY,
Notary Public in and for the County of Kern, State of
California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 21st day of Dec., 1914.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit, the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me, this 21st day of Dec., 1914.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

EXHIBIT E.

THIS MORTGAGE, made the 4th day of January, 1915, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to wit:

Sixty tons of corn, twenty tons of alfalfa hay, and fifty tons of barley hay, at Bannister's Warehouse, Wible Siding, Kern County, California.

as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to-wit:

\$1500.00

Bakersfield, California Jan'y 4th 1915 No. . . .

Sixty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date, until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Cancelled Stamps

30 cents.

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has here-

unto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 4th day of January, in the year one thousand nine hundred and fifteen, before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Signed) C. H. FRANEY,
Notary Public in and for the County of Kern, State of
California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 4th day of Jan., 1915.

(Signed) C. H. FRANEY,
Notary Public in and for Said County of Kern.

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit, the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me, this 4th day of Jany., 1915.

(Signed) C. H. FRANEY,
Notary Public in and for Said County of Kern.

EXHIBIT F.

THIS MORTGAGE, made this 5th day of January, 1915, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation, mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit:

At Bannister's Warehouse, corner 14th and D Sts., Santa Fe Yards, Bakersfield, California, seventy tons of Egyptian corn.

as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to-wit:

\$1000.00

Bakersfield, California, Jany 5th 1915 No....

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of one thousand and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Canceled Stamps

20 cents.

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property, and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 5th day of January, in the year one thousand nine hundred and fifteen before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) (Signed) C. H. FRANEY,
Notary Public in and for the County of Kern, State of
California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 5th day of Jan., 1915.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

State of California,
County of Kern,—ss.

J. K. Russell; being first duly sworn, says: That he is an officer of The National Bank of Bakersfield,

the mortgagee named in the foregoing mortgage, to-wit: the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me, this 5th day of Jan., 1915.

(Signed) C. H. FRANEY,

Notary Public in and for Said County and State.

EXHIBIT G.

THIS MORTGAGE, made the 12th day of January, 1915, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation, mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit:

Two hundred tons of grain hay located at Bannister's Warehouse, Wible Siding, Kern County, California.

as security for the payment to the said mortgagee of a promissory note, in the words and figures following, to-wit:

\$1500.00

. Bakersfield, California, Jan'y 12th 1915 No. . . .

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at

the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Cancelled Stamps
30 cents.

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 12th day of January, in the year one thousand nine hundred and fifteen, before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose

name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) (Signed) C. H. FRANEY,
Notary Public in and for the County of Kern, State of
California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 12th day of
Jany., 1915.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit, the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me, this 12th day of Jany., 1915.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

EXHIBIT H.

THIS MORTGAGE, made the 12th day of January, 1915, by Alfred W. Bannister of Bakersfield, County of Kern, State of California, by occupation, mortgagor, to The National Bank of Bakersfield, by occupation a banking corporation, mortgagee,

Witnesseth: That the said mortgagor mortgages to said mortgagee all that certain personal property situated and described as follows, to-wit: at Bannister's Warehouse, corner of 14th & D Sts., Santa Fe Yards, Bakersfield, California.

White

Egypt Corn	3345	Sacks	410,000"	\$30.00	\$6,000.00
Red " "	768	"	96,000"	26.00	1,248.00
Feterita	315	"	37,800"	26.00	491.40
R. Barley	750	"	57,750"	28.00	808.50
Barley	145	"	14,500"	26.00	188.50
Oats	385	"	30,800"	28.00	431.20
Shelled Corn	95	"	10,000"	30.00	150.00
Wheat	74	"	10,360"	30.00	155.40
Bale Ties	975	Bales		1.15	1,120.00
Alfalfa	1877	"	236,150"	7.00	826.50
Grain Hay	1134	"	140,600"	8.00	562.40
Ear Corn in					
Crib			142,200	22.00	1,562.00

Wible Warehouse

Red Egypt

Corn	1060	126,700"	26.00	1,647.10
Barley Hay	445	52,000"	8.00	208.00

Total \$15,399.00

as security for the payment to the said mortgagee of promissory notes, in the words and figures following, to-wit:

\$2500.00

Bakersfield, California Nov. 11th 1914 No. . . .

Sixty days after date, for value received, I promise, to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of twenty-five hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address 50 cents stamps cancelled.

\$1000.00

Bakersfield, California, Dec. 1st 1914 No. . . .

Ninety days after date, for value received, I promise

to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of one thousand and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Stamps
20 cents cancelled.

\$1500.00

Bakersfield, California, Dec. 9th 1914 No....

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Stamps Cancelled
 30 cents.

\$1500.00

Bakersfield, California, Dec. 21st 1914 No....

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly, and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Stamps Cancelled
 30 cents.

\$1500.00

Bakersfield, California, Jan'y 4th 1915 No....

Sixty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at

the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address

Stamps Cancelled 30 cents.

\$1,000.00

Bakersfield, California Jan 5th 1915 No....

Thirty days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of one thousand and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Stamps Cancelled
20 cents.

\$1500.00

Bakersfield, California Jan 12th 1915 No....

Ninety days after date, for value received, I promise to pay The National Bank of Bakersfield, or order at its banking house in said Bakersfield, the sum of fifteen hundred and no/100 dollars, with interest thereon at the rate of eight per cent per annum from date until paid, interest payable monthly and, if not so paid, to become a part of the principal and thereafter bear a like rate of interest, and, should any interest not be paid when due, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note and the same or any part thereof may be charged to the account in said bank of any maker.

In case action is commenced on this note, I agree to pay a reasonable attorney's fee therein.

(Signed) A. W. BANNISTER.

Address Stamps Cancelled
30 cents.

It Is Also Agreed that if the said mortgagor shall fail to make any payment in said promissory note provided, then said mortgagee shall have the right to the immediate possession of said mortgaged property and may take possession of all of said property and use all necessary force so to do.

In Witness Whereof, the said mortgagor has hereunto set his hand and seal, the day and year first above written.

(Signed) ALFRED W. BANNISTER. (Seal)

State of California,
County of Kern,—ss.

On this 12th day of January, in the year one thousand nine hundred and fifteen, before me, C. H. Franey, a Notary Public, in and for said Kern County, duly commissioned and qualified, personally appeared Alfred W. Bannister, known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office, the day and year in this certificate first above written.

(Seal) (Signed) C. H. FRANEY,
Notary Public in and for the County of Kern, State of
California.

State of California,
County of Kern,—ss.

Alfred W. Bannister, the mortgagor in the foregoing mortgage named, being first duly sworn, deposes and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) ALFRED W. BANNISTER.

Subscribed and sworn to before me, this 12th day of January, 1915.

(Signed) C. H. FRANEY,
Notary Public in and for Said County and State.

State of California,
County of Kern,—ss.

J. K. Russell, being first duly sworn, says: That he is an officer of The National Bank of Bakersfield, the mortgagee named in the foregoing mortgage, to-wit, the Cashier of said bank, and makes this affidavit on behalf of said mortgagee; that the said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

(Signed) J. K. RUSSELL.

Subscribed and sworn to before me, this 12th day of January, 1915.

(Signed) C. H. FRANEY,

Notary Public in and for Said County and State.

Endorsed: Filed for record at the request of National Bank of Bakersfield Apr. 23, A. D. 1915, at 15 min. past 4 o'clock P. M., and recorded in Vol. 29 of Chat. Mtgs., page 267, Kern County Records. Chas. A. Lee, Recorder. By Fred W. Lee, Deputy Recorder. 220. Compared.

[Endorsed]: Original. No. B 94. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., as Trustee, etc., Complainant, vs. National Bank of Bakersfield, a corporation, Defendant. Answer to Bill of Complaint. Service of the within Answer is hereby admitted this 7th day of September, 1915. Ernest U. Schroeter, Lucius K. Chase, Attorneys for Complainant. Filed Sep. 7, 1915. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. C. L. Claflin, W. N. Goodwin, and Hunsaker & Britt, 1132-1143 Title Insurance

Bldg., Fifth and Spring streets, Los Angeles, Cal.,
Attorneys for Defendant.

In Equity. No. B. 94.

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

WILLIAM H. MOORE, JR., as Trustee of the Estate
of Alfred W. Bannister, a bankrupt,
Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a cor-
poration organized and existing under and by
virtue of the laws of the United States,
Defendant.

**Answer to Amendment to Bill of Equity and to the Bill
as Thus Amended.**

Now comes the defendant above named, and makes
and files this, its answer, to the amendment to the bill
in equity herein and to the bill as thus amended, in
addition and supplemental to the answer herein, as
follows:

(1) Alleges that the purported bill as thus amended
does not, nor does any paragraph thereof, state facts
constituting a valid cause of action in equity, nor does
said purported bill in equity as thus amended, nor any
paragraph thereof, state facts sufficient to entitle plain-
tiff to the relief sought in and by said amended bill,
nor facts sufficient to give this court jurisdiction in
equity of plaintiff's claims therein urged.

(2) Alleges that said amendment to said purported
bill in equity does not contain any allegations of fact,

but that said purported allegations of fact are merely legal conclusions argumentatively stated.

(3) Further answering said purported amended bill in equity, and particularly said amendment thereto, defendant alleges that said purported amended bill in equity, and particularly said amendment thereto, lack certainty in each of the following respects, the specifications of uncertainty hereinafter set forth being relied upon individually and collectively:

(a) It cannot be ascertained what creditors, if any, said Alfred W. Bannister had on the 24th of May, 1915;

(b) It cannot be ascertained what was the class of the creditors, if any, of said Alfred W. Bannister on the 24th of May, 1915;

(c) It cannot be ascertained what were the amounts of the respective claims, if any, against said Alfred W. Bannister on the 24th of May, 1915;

(d) It cannot be ascertained when the various claims, if any, against said Alfred W. Bannister were incurred.

(4) Further answering said purported amended bill in equity, and particularly the amendment thereto, defendant says that it is without information or belief sufficient to enable it to answer the allegations of said amendment, and for lack of such information or belief denies that, at the time said Alfred W. Bannister was adjudged a bankrupt, or on the 24th of May, 1915, or at any other time, he had various or any creditors other than the defendant herein, or that many or any of them held unsecured claims or claims at all against him; and for like reason denies that the indebtedness,

if any, in favor of certain of said creditors, if any, was incurred subsequent to the 12th day of January, 1915, but prior to the 23rd day of April, 1915, or incurred at all; and denies that the indebtedness, if any, in favor of certain other of said creditors, if any, was incurred on various or any date prior to the 12th day of January, 1915, or incurred at all.

WHEREFORE, defendant prays that complainant take nothing by said purported amended bill in equity, or said amendment thereto, and that it be hence dismissed with its costs.

C. L. CLAFLIN,
G. HAROLD JANEWAY,
HUNSAKER & BRITT,
Attorneys for Defendant.

United States of America,
Southern District of California,
County of Kern,—ss.

J. K. Russell, being duly sworn, deposes and says, that he is the cashier of the defendant, and makes this verification on behalf of said defendant; that he has read the foregoing answer, and knows the contents thereof: that the same is true of his own knowledge, except as to those matters therein stated to be on information and belief, and that as to those matters he believes it to be true.

J. K. RUSSELL.

Subscribed and sworn to before me this 1st day of April, 1916.

[Seal] C. L. CLAFLIN,
Notary Public in and for the County of Kern, State of California.

[Endorsed]: Original. No. B 94 Eq. In the United States District Court, Southern District of California, Northern Division. William H. Moore, Jr., etc., Plaintiff, vs. Nat. Bank of Bakersfield, Defendant. Answer to Amendment to Bill. Receipt of a copy of the within is hereby admitted this 3rd day of April, 1916. Lucius K. Chase, Attorney for Pltff. Filed Apr. 4, 1916. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal., Attorneys for Deft.

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

No. B-94.

WM. H. MOORE, JR., as Trustee of the Estate of
Alfred W. Bannister, a bankrupt,
Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a cor-
poration organized and existing under and by
virtue of the laws of the United States,
Defendant.

Amended Bill in Equity.

To the Honorable Judges of the District Court of the
United States, in and for the Southern District of
California:

Comes now Wm. H. Moore, Jr., as Trustee of the
estate of Alfred W. Bannister, bankrupt, and leave of
the Court being first duly had, files this his amendment

to the bill of complaint filed herein, and by way of such amendment, and additional thereto, alleges:

I.

That at the time the said Alfred W. Bannister was adjudicated a bankrupt herein, to-wit, on the 24th day of May, 1915, he had various creditors other than the defendant herein, many of whom held unsecured claims against him; that the indebtedness in favor of certain of said unsecured creditors was incurred by said bankrupt subsequent to the 12th day of January, 1915, but prior to the 23rd day of April, 1915, while the indebtedness in favor of certain other of said unsecured creditors was incurred by said bankrupt on various dates prior to the 12th day of January, 1915, and said creditors had no knowledge of said mortgage referred to in said complaint prior to their recordation.

WM. H. MOORE, JR.,

As Trustee of the Estate of Alfred W. Bannister,
Bankrupt.

LUCIUS K. CHASE,

ERNEST U. SCHROETER,

Attorneys for Complainant.

United States of America,

Southern District of California,

Southern Division,

County of Los Angeles,—ss.

Wm. H. Moore, Jr., the complainant in the foregoing Amendment to Bill in Equity, being duly sworn, says that he has read the foregoing Amendment to Bill in Equity and knows the contents thereof, and that the same is true of his own knowledge, except as to those

matters therein stated to be on information and belief, and as to those matters that he believes it to be true.

WM. H. MOORE, JR.

Subscribed and sworn to before me this 18th day of March, 1916.

[Seal]

M. LUCILE ADAMS,

Notary Public in and for the County of Los Angeles,
State of California.

It Is Hereby Stipulated that the foregoing Amendment to Bill of Complaint may be filed and considered as engrossed, with leave to defendant to plead thereto to the bill as thus amended, within 10 days from filing thereof.

G. HAROLD JANEWAY,

C. L. CLAFLIN,

HUNSAKER & BRITT,

Attys. for Defendant.

It Is So Ordered.

TRIPPET,

Judge of the District Court.

[Endorsed]: Original. No. B-94. In the District Court of the United States, in and for the Southern District of California, Southern Division. Wm. H. Moore, Jr., Trustee of the Estate of Alfred W. Bannister, etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., Defendant. Amendment to Bill in Equity. Filed Apr. 5, 1916. Wm. M. Van Dyke, Clerk; by R. S. Zimmerman, Deputy Clerk. Lucius K. Chase, Ernest U. Schroeter, Attorneys for Complainant.

At a stated term, to-wit: the January term, A. D., 1916, of the District Court of the United States of America, in and for the Southern District of California, Southern Division, held at the court room thereof, in the City of Los Angeles, on Wednesday, the twenty-fourth day of May, in the year of our Lord one thousand nine hundred and sixteen. Present: The Honorable OSCAR A. TRIPPET, District Judge.

WM. H. MOORE, JR., Trustee, etc.,

Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD,

Defendant.

Nos. B-94 Equity, S. D., and A 32 Equity, N. D.,
Combined for Final Hearing.

Copy of Minute Order Amending Bill.

These causes, combined for final hearing in open court, coming on this day for further proceedings and orders on said final hearing; Lucius K. Chase, Esq., and Ernest U. Schroeter, Esq., appearing as counsel for complainant in each cause; G. Harold Jane-way, Esq., appearing as counsel for defendant in each cause; I. Benjamin, appointed shorthand reporter in these causes, being present and acting as such reporter; now, pursuant to the stipulation of the parties, by their solicitors of record, which is filed in open court, in Cause No. B 94 Equity, S. D., it is ordered that the bill of complaint in said Cause No. B 94 Equity, S. D., be amended by inserting on page 4 thereof, in line 22, after "1915," the words "and now

are," and that the amendment to said Bill of Complaint be amended by inserting in the fifth line of the first paragraph, after the word "said" and before the word "creditors" the word "unsecured," and by adding at the end thereof the following: "And said creditors had no knowledge of said mortgages referred to in said complaint prior to their recordation," said amendments to be made by the Clerk and attested by him with a reference to this order; and W. C. Wells and Minnie Meyer having respectively been called and sworn as witnesses on behalf of complainant, and having given their testimony; and Alfred W. Bannister, a witness on behalf of complainant, having been recalled for further examination, and having given his testimony, and, in connection with the testimony of said witness, complainant having offered certain exhibits, which are admitted in evidence in his behalf, to-wit: Compl's Ex. 10, eight checks drawn by Alfred W. Bannister, in favor of National Bank of Bakersfield, aggregating \$7,700.00; and Compl's Ex. 11, accounts of National Bank of Bakersfield, contained in ledger of A. W. Bannister at page 106 thereof; and Court, at the hour of 11:25 o'clock a. m., having taken a recess for 10 minutes; and now, at the hour of 11:35 o'clock a. m., Court having reconvened; and counsel and the shorthand reporter being present as before; and Alfred W. Bannister, a witness on behalf of complainant, having again taken the stand for further examination, and having given his testimony; and, in connection with the testimony of said witness, defendant having offered certain exhibits, which are admitted in evidence in its behalf, to-wit: Deft's Ex. A, chattel mortgage, Alfred

W. Bannister to The National Bank of Bakersfield, dated Nov. 11, 1914; Deft's Ex. B, chattel mortgage, Alfred W. Bannister to The National Bank of Bakersfield, dated Dec. 1, 1914; and Deft's Ex. C, chattel mortgage, Alfred W. Bannister to The National Bank of Bakersfield, dated Dec. 9, 1914; and Court, at the hour of 12 o'clock, m., having taken a recess until the hour of 2 o'clock, p. m., of this day;

And now, at the hour of 2 o'clock, p. m., Court having reconvened; and counsel and shorthand reporter being present as before; and Alfred W. Bannister, a witness on behalf of complainant, having taken the stand for further examination and having given his testimony; and, in connection with the testimony of said witness, defendant having offered certain exhibits, which are admitted in evidence in its behalf, to-wit: Deft's Ex. D, chattel mortgage, Alfred W. Bannister to The National Bank of Bakersfield, dated Jan. 4, 1915; Deft's Ex. E, chattel mortgage, Alfred W. Bannister to The National Bank of Bakersfield, dated Jan. 5, 1915; Deft's Ex. F, chattel mortgage, Alfred W. Bannister to The National Bank of Bakersfield, dated Jan. 5, 1915; Deft's Ex. G, deed of trust from Alfred W. Bannister to J. K. Russell, and F. J. Galtes, dated Apr. 8, 1915; and, also in connection with the testimony of said witness, complainant having offered certain exhibits, which are admitted in evidence in his behalf, to-wit: Compl's Ex. 12, pass-book of Alfred W. Bannister, account with The National Bank of Bakersfield; Compl's Ex. 13, freight receipts issued by Atchison, Topeka & Santa Fe Railway Company to Alfred W. Bannister; Compl's Ex. 14, bundle of

checks drawn by Alfred W. Bannister, with statement dated Apr. 29, 1915; Compl's Ex. 15, bundle of checks drawn by Alfred W. Bannister, with statement dated Feb. 27, 1915; Compl's Ex. 16, bundle of checks drawn by Alfred W. Bannister, with statement dated 3/29/1915; and Compl's Ex. 17, certified copy of adjudication as a bankrupt of Alfred W. Bannister, in bankruptcy matter No. 2026 Bkcy., S. D., in this Court; and James E. Price having been called and sworn as a witness on behalf of complainant, and having given his testimony; and J. K. Russell having been called and sworn as a witness on behalf of complainant, and having given his testimony; and complainant having rested: and G. Harold Janeway, Esq., of counsel for defendant, having, in each of the two cases, B 94 Equity S. D., and A 32 Equity N. D., moved the Court to dismiss the Bill of Complaint; and each of said causes having been submitted to the Court for its consideration and decision, without argument, on said motion to dismiss; it is by the Court ordered that each of said motions to dismiss the Bill of Complaint in causes Nos. B 94 Equity, S. D., and A 32 Equity, N. D., be, and the same hereby is overruled; and J. K. Russell, a witness for complainant, having been recalled as a witness on behalf of defendant, and having given his testimony; it is, at the hour of 4:21 o'clock p. m., ordered that these causes be, and they hereby are continued for further hearing until Thursday, the 25th day of May, 1916, at 10 o'clock a. m.

[Endorsed]: No. B 94 Eq. United States District Court, Southern District of California, Southern Division. Wm. H. Moore, Jr., Trustee, vs. National

Bank of Bakersfield. Copy of Minute Order amending Bill. Filed Jul. 28, 1916. Wm. M. Van Dyke, Clerk; by Leslie S. Colyer, Deputy Clerk.

In Equity. No. B 94.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

WM. H. MOORE, JR., as Trustee of the Estate of
Alfred W. Bannister, a Bankrupt,

Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a Corpo-
ration, Organized and Existing Under and By
Virtue of the Laws of the United States,

Defendant.

Decree in Equity.

This cause came on to be heard at the preceding term, and was argued by counsel, and thereupon, upon consideration thereof, it is hereby ordered, adjudged and decreed as follows, viz.:

That certain chattel mortgage bearing date December 21, 1914, whereby Alfred W. Bannister purported to mortgage to The National Bank of Bakersfield, a corporation, the corrugated iron and frame warehouse building located on the Southern Pacific Company's land at Wible Orchard Siding, Kern County, California, which chattel mortgage was recorded April 23, 1913, in Volume 29 of Chattel Mortgages, at page 265 thereof, Kern County Records, is hereby decreed to be null and void and of no effect, and the record thereof as aforesaid is hereby cancelled.

That certain chattel mortgage bearing date January 5, 1915, whereby Alfred W. Bannister purported to mortgage to The National Bank of Bakersfield, a corporation, a 4-passenger convertible "6" Stutz automobile, Model 1913, Series 4-B, Car No. 1006, which said chattel mortgage was recorded April 23, 1915, in Volume 29 of Chattel Mortgages, at page 272 thereof, Kern County Records, is hereby decreed to be null and void and of no effect, and the record thereof, as aforesaid, is hereby cancelled.

That certain chattel mortgage bearing date January 12, 1915, whereby Alfred W. Bannister purported to mortgage to the National Bank of Bakersfield, a corporation, two hundred tons of grain and hay located at Bannister's warehouse, Wible Orchard Siding, Kern County, California, which chattel mortgage was recorded April 23, 1915, in Volume 29 of Chattel Mortgages, at page 263 thereof, Kern County Records, is hereby decreed to be null and void and of no effect and the record thereof, as aforesaid, is hereby cancelled;

That certain chattel mortgage bearing date January 12, 1915, whereby Alfred W. Bannister purported to mortgage to The National Bank of Bakersfield, a corporation, various items of grain and hay, therein specified, which said chattel mortgage was recorded April 23, 1915, in Volume 29 of Chattel Mortgages, at page 267 thereof, Kern County records, is hereby decreed to be null and void and of no effect and the record thereof, as aforesaid, is hereby cancelled.

And it appearing that payments in the sum of one thousand dollars (\$1,000.00) made by said Alfred W. Bannister to said bank between April 23rd, 1915,

and May 5th, 1915, on which date the petition in involuntary bankruptcy in the matter of the estate of Alfred W. Bannister, bankrupt, was filed, constituted a preference within the meaning of the provisions of the United States Bankruptcy Acts, and as such are invalid; and that subsequent to May 5th, 1915, defendant took possession of and sold the undisposed portion belonging to said bankrupt's estate covered by the two last mentioned mortgages and other similar property of said bankrupt commingled therewith, and received from the proceeds of the sale thereof the sum of eight thousand three hundred eighty-one dollars and thirteen cents (\$8,381.13), the reasonable value thereof; it is decreed that said defendant pay to Wm. H. Moore, Jr., as Trustee of the estate of Alfred W. Bannister, bankrupt, the aforesaid sums aggregating nine thousand three hundred eighty-one dollars and thirteen cents (\$9,381.13), together with interest thereon at seven per cent per annum from the 10th day of July, 1915.

And it appearing that there was no moral turpitude on the part of said defendant bank,

It Is Further Ordered: That within sixty days after the entry of final judgment herein said National Bank of Bakersfield may file its unsecured general claim against the estate of Alfred W. Bannister, bankrupt, in the amount unpaid upon the promissory notes referred to in said purported chattel mortgages, and said claim shall be allowed as an unsecured claim, in the amount so unpaid, in the event defendant shall have first paid the final judgment herein.

Judgment is hereby directed in favor of complainant

and against defendant, for complainant's costs herein, taxed at the sum of \$72.56.

Dated, July 24th, 1916.

OSCAR A. TRIPPET,

Judge.

Decree entered and recorded July 24, 1916. Wm. M. Van Dyke, Clerk; by Leslie S. Colyer, Deputy Clerk.

[Endorsed]: Original. In Equity. B 94 Eq. In the United States District Court, Southern District of California, Southern Division. Wm. H. Moore, Jr., Trustee of the Estate of Alfred W. Bannister, a Bankrupt, Complainant, vs. National Bank of Bakersfield, a Corporation, etc., Defendant. Decree in Equity. Filed July 24, 1916. Wm. M. Van Dyke, Clerk; by Leslie S. Colyer, Deputy Clerk. 4 Eq. Jl 29.

Whereupon, said Bill of Complaint, Subpoena ad respondendum, Answer of Defendant, Answer to Amendment to Bill, Amendment to Bill, Copy Order Amending Amendment to Bill, and Final Decree are hereto annexed, said Final Decree having been duly signed, filed and enrolled, pursuant to the practice of said District Court.

Attest, etc.,

[Seal]

WM. H. VAN DYKE,

Clerk.

By Leslie S. Colyer,

Deputy Clerk.

[Endorsed]: No. B 94 Equity. In the District Court of the United States for the Southern District of California, Southern Division. Wm. H. Moore, Jr., Trustee, etc., vs. National Bank of Bakersfield. Enrolled papers. Filed July 28, 1916. Wm. M. Van Dyke, Clerk; by Leslie S. Colyer, Deputy Clerk. Recorded Eq. Jl. Book No. 4, page 29.

In Equity. No. A 32.

*In the District Court of the United States in and for
the Southern District of California, Southern
Division.*

WILLIAM H. MOORE, JR., as Trustee of the Estate
of Alfred W. Bannister, Bankrupt,
Complainant.

vs.

NATIONAL BANK OF BAKERSFIELD, a Corpo-
ration Organized and Existing Under and By
Virtue of the Laws of the United States; J. K.
RUSSELL and J. F. GALTES,
Defendants.

Citation on Appeal.

United States of America,—ss.

To WILLIAM H. MOORE, JR., Trustee of the Estate
of Alfred W. Bannister, a Bankrupt, Greeting:

You Are Hereby Cited and Admonished to be and
appear at the United States Circuit Court of Appeals
for the Ninth Circuit, at the City of San Francisco,
California, within thirty days from the date of this
writ, pursuant to an appeal duly allowed by the District
Court for the Southern District of California, South-
ern Division, and filed in the Clerk's office of said
court on the 16th day of January, 1917, in a cause
wherein National Bank of Bakersfield, a corporation,
J. K. Russell and J. F. Galtes are appellants, and you
are respondent, to show cause, if any, why the decree
rendered against said appellants, as in said appeal
mentioned, should not be corrected, and why speedy
justice should not be done to the parties in that behalf.

Witness the Hon. Oscar A. Trippet, Judge of the United States District Court for the Southern District of California, Southern Division, this 16th day of January, 1917.

OSCAR A. TRIPPET,
District Judge.

Service of a copy of the within citation is hereby admitted, this 16th day of January, 1917.

LUCIUS K. CHASE,
E. U. SCHROETER,
Attorneys for Respondent.

[Endorsed]: Original. No. A 32. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a Corporation, etc., et al., Defendants. Citation on Appeal. Filed Jan. 16, 1917. Wm. M. Van Dyke, Clerk; by Leslie S. Colyer, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal., Attorneys for Defendants.

*In the District Court of the United States of America
in and for the Southern District of California,
Northern Division.*

No. In Equity.

WILLIAM H. MOORE, JR., as Trustee of the Estate
of Alfred W. Bannister, Bankrupt,
Complainant.

vs.

NATIONAL BANK OF BAKERSFIELD, a Corporation Organized and Existing Under and By Virtue of the Laws of the United States; J. K. RUSSELL and J. F. GALTES,
Defendants.

Bill of Complaint.

To the Honorable Judges of the District Court of the United States, in and for the Southern District of California, Northern Division: In Chancery Sitting:

William H. Moore, Jr., as Trustee of the Estate of Alfred W. Bannister, a bankrupt, a citizen of the State of California, residing in Los Angeles County in said state, brings this his Bill of Complaint against National Bank of Bakersfield, a banking corporation organized and existing under and by virtue of the laws of the United States, a citizen of the State of California, with its principal place of business in the City of Bakersfield, in Kern County in said State; and J. K. Russell and F. J. Galtes, citizens of the State of California, residing in the City of Bakersfield, in Kern County in said State of California.

And therefore complainant complains and says:

That on the 5th day of May, A. D., 1915, W. C. Wells, Security National Bank of Los Angeles, a corporation, William H. Mead and National Bank of Pasadena, a corporation, as petitioning creditors filed in the District Court of the United States in and for the Southern District of California, Southern Division, an involuntary petition in bankruptcy against Alfred W. Bannister, a citizen of the State of California and residing in the City of Los Angeles in Los Angeles County, in said state, praying that the said Alfred W. Bannister be adjudged a bankrupt and that service of said petition, with a subpoena, be made upon him; that thereupon upon, the same day, a subpoena duly issued out of and under the seal of said

Court directed to the said Bannister, commanding him to appear and answer the said petition on the 17th day of May, 1915; that thereafter, to-wit, on the 12th day of May, 1915, the said subpoena with a copy of the said petition was duly served upon the said Bannister at the City of Bakersfield, Kern County, California, and on the 24th day of May, 1915, the said Bannister was, by the aforesaid Court, declared and adjudged a bankrupt.

That thereafter, to-wit, on the 22nd day of June, 1915, at the first meeting of the creditors of said bankrupt regularly called for such purpose, your complainant herein was duly elected Trustee of said bankrupt estate, and qualified as such Trustee on the same day, and has at all times since said 22nd day of June, 1915, been, and is now, Trustee of said bankrupt estate acting in the proper and full discharge of his duties as such Trustee.

Your complainant further says that he is informed that the defendant, National Bank of Bakersfield, claims to have advanced, prior to the 8th day of April, 1915, to the said bankrupt Bannister, and by way of loan, various sums of money, and that to evidence the said alleged loans, the said Bannister executed and delivered to the said National Bank of Bakersfield prior to said 8th day of April, 1915, divers promissory notes as follows, to-wit:

One dated November 11, 1914, for twenty-five hundred dollars (\$2500); one dated December 1, 1914, for one thousand dollars (\$1,000.00); one dated December 9, 1914, for fifteen hundred dollars (\$1500.00); one dated December 21, 1914, for fifteen hundred dollars

(\$1500.00); one dated January 4, 1915, for fifteen hundred dollars (\$1500.00); one dated January 5, 1915 for one thousand dollars (\$1,000.00) and one dated January 12, 1915, for fifteen hundred dollars (\$1500.00).

Your complainant further says that on and prior to the 8th day of April, 1915, the said Alfred W. Bannister was the owner in fee simple, and in possession of, the following described real property; situated in the County of Kern, State of California, to-wit:

The south one-half ($S\frac{1}{2}$) of the southeast quarter (S.E. $\frac{1}{4}$) of the southeast quarter (S.E. $\frac{1}{4}$) of section thirty-five (35), township 11 north, range 23 west, San Bernardino base and meridian.

Your complainant further says that on or about the 8th day of April, 1915, the said Alfred W. Bannister executed to the defendants, J. K. Russell and F. J. Galtes, a certain instrument in writing, purporting to be a deed of trust, and purporting therein and thereby to transfer, convey and set over to the said defendants, Russell and Galtes, as trustees, the above described real property, as and for security for the payment of certain promissory notes aggregating ten thousand dollars (\$10,000), executed by the said Alfred W. Bannister to the said National Bank of Bakersfield, and which said notes are the notes hereinabove referred to, and as security for any further or additional sum or sums of money, with interest thereon, that might under the provisions of said purported Deed of Trust, be paid, expended, or advanced by, or that might otherwise be or become due, or payable to the said defendants Russell and Galtes or the said defendant

National Bank of Bakersfield, and also as and for security for the repayment of such additional sums, with interest thereon, as might thereafter be borrowed or received by the said Alfred W. Bannister from the said National Bank of Bakersfield; a copy of which alleged deed of trust, marked "Exhibit A," is hereto, to this Bill of Complaint, annexed and hereby made a part hereof.

Your complainant is informed and believes, and upon such information and belief charges the fact to be, that the said defendants, National Bank of Bakersfield, J. K. Russell, and F. J. Galtes, did not, nor did either of them, pay, advance, or expend any sum or sums of money whatsoever under the provisions of said alleged deed of trust, nor did the said defendant, National Bank of Bakersfield, make any further or other loans of money whatsoever to the said Alfred W. Bannister, subsequent to the execution of said alleged deed of trust.

Your complainant further says that the said purported deed of trust was executed on the 8th day of April, 1915, and was recorded in the office of the Recorder of Deeds of Kern County, California, on the 23rd day of April, 1915, in Volume 295 of Trust Deeds, at page 328, Kern County Records; that the said purported deed of trust was executed and recorded within four months prior to the filing of the hereinabove mentioned involuntary petition in bankruptcy against the said Alfred W. Bannister; that at the time of the execution, and also at the time of the recordation of said purported deed of trust, the said Alfred W. Bannister was insolvent; that at the time of the

execution and recordation of said instrument, the said National Bank of Bakersfield had reasonable cause to believe that the transfer of the title to said property, under said deed of trust to, the defendants Russell and Galtes, as trustees, for the purpose of securing the payment of the aforesaid promissory notes, would effect a preference in its favor over the other creditors of said bankrupt in the same class; and the enforcement of the lien of said purported deed of trust, or the recognition thereof as a valid transfer of the aforesaid property, for the purposes above mentioned, will enable the defendant, National Bank of Bakersfield, as a creditor of the said bankrupt, Alfred W. Bannister, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Your complainant further says that said purported deed of trust was executed by the said Bannister to the said defendants J. K. Russell and F. J. Galtes for the purpose and with the intent of defrauding the creditors of the said Alfred W. Bannister.

Your complainant further says that unless the relief herein prayed for be granted to him by Your Honors, that the assets of the said estate of Alfred W. Bannister will be materially reduced by a large amount, and that the creditors of said estate will be deprived of their right to have applied to the payment of their respective claims, free of all liens and encumbrances, the property hereinabove mentioned.

To the end, therefore, that your complainant may obtain relief in the premises in this Honorable Court, where alone adequate relief can be afforded, he prays:

1. That the said defendants, National Bank of Bakersfield, J. K. Russell and F. J. Galtes, each be compelled to make full, true, direct and perfect answer to each and every allegation of this Bill of Complaint according to the best of its and his knowledge, remembrance, information and belief, but not on oath, answer on oath being expressly waived;

2. That the said purported deed of trust, executed by the said bankrupt, Alfred W. Bannister, to the said defendants, J. K. Russell and F. J. Galtes, as trustees, and dated the 8th day of April, 1915, be decreed null and void and of no effect, and that it further be decreed that said J. K. Russell and F. J. Galtes be required to reconvey said property to this complainant, and that in case they refuse so to do, that the Court appoint a commissioner who shall make such conveyance.

3. That your complainant may have such other or further relief as equity may require.

4. May its please Your Honors to grant your complainant a writ of subpoena directed to the defendants, National Bank of Bakersfield, J. K. Russell and F. J. Galtes and commanding each of them at a certain time under a certain penalty to appear before Your Honors, in this Court, then and there to answer unto this Bill of Complaint, and to abide by and perform such decree as the Court may make in the premises.

WM. H. MOORE, JR.,

As Trustee of the Estate of Alfred W. Bannister,
Bankrupt.

LUCIUS K. CHASE,

ERNEST U. SCHROETER,

Attorneys for Complainant.

State of California,
County of Los Angeles,—ss.

William H. Moore, Jr., the complainant in the foregoing bill named, being duly sworn, says that he has read the foregoing bill and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated to be on information and belief, and as to those matters he believes them to be true.

WM. H. MOORE, JR.

Subscribed and sworn to before me this 15th day of July, 1915.

[Seal]

M. LUCILE ADAMS,

Notary Public in and for the County of Los Angeles,
State of California.

“EXHIBIT A.”

THIS DEED OF TRUST, made this 8th day of April, 1915, by and between A. W. Bannister of Bakersfield, in the County of Kern, State of California, the party of the first part, and J. K. Russell and F. J. Galtes, the parties of the second part, and The National Bank of Bakersfield, a corporation duly incorporated, organized and existing under the laws of the United States, the party of the third part, Witnesseth:

Whereas, the said party of the first part has borrowed and received of the said party of the third part the sum of ten thousand and no/100 dollars, and has agreed to repay the same, with interest, in gold coin of the United States, according to the terms of certain promissory notes executed by the said party of the first part to the said party of the third part;

Now This Indenture Witnesseth: That the said party of the first part, in consideration of the aforesaid indebtedness and of the sum of one dollar to him in hand paid by the said parties of the second part (the receipt whereof is hereby acknowledged), and for the purpose of securing the payment of the indebtedness evidenced by said promissory note, with interest as therein provided, and of any sum or sums of money with interest thereon that may be paid, expended or advanced by, or that may otherwise be or become due or payable to, the said parties of the second part, or the said party of the third part, under the provisions of this instrument, and also as security for the repayment of such additional sums, with interest thereon, as may be hereafter borrowed or received by the said party of the first part from the said party of the third part and evidenced by another promissory note or other promissory notes executed and delivered by said party of the first part to the said party of the third part, does by these presents grant, bargain, sell, convey and confirm unto the said parties of the second part, as joint tenants and in joint tenancy, and to the survivor of them, all that certain real property situate in the County of Kern, State of California, described as follows:

The south half of the southeast quarter of the southeast quarter of section 35, township 11, north range 23 west, S. B. and M.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and

reversions, remainder and remainders, rents, issues and profits thereof.

To Have and to Hold the same unto the said parties of the second part, as joint tenants, and the survivor of them and to their successors and assigns, upon the trusts herein expressed:

First. During the continuance of these trusts the parties of the second part, or the survivor of them, and the said party of the third part, their successors and assigns, are hereby authorized to pay without previous notice all or any taxes, assessments, liens or incumbrances now subsisting or that may hereafter exist upon said premises, which may in their judgment affect said premises or these trust; and they may in their discretion, at the expense of the said party of the first part, contest the payment of any such liens or incumbrances, or may defend any suit or proceeding that they may consider proper to protect the title to said premises and also to keep at their option the buildings now erected or which may hereafter be erected on said premises insured against loss by fire in the sum of.....dollars or less, in their discretion, loss, if any, payable, to the said party of the third part; and these trusts shall be and continue as security to the said party of the third part and the said parties of the second part or the survivor of them, and their assigns, for the repayment in gold coin of the United States of the indebtedness evidenced by said promissory note, with interest as therein provided; also as security for the repayment of any sum or sums of money, with interest thereon that may be paid, expended or advanced by, or that other-

wise may be or become due or payable to, the said parties of the second part or the said party of the third part, under the provisions of this instrument; also as security for the repayment of such additional sums, with interest thereon, as may be hereafter borrowed and received by the said party of the first part or either of *the* from the said party of the third part as evidenced by any other promissory note or notes executed by said part. . of the first part or either of them to the said party of the third part; also as security for the repayment of all amounts paid out as aforesaid and costs and expenses incurred as aforesaid, whether by said parties of the second part or said party of the third part, together with the reasonable expenses of these trusts, including, in case of a demand for sale, the compensation of the said parties of the second part, as trustees, hereinafter mentioned, with interest on all such sums and payments at the rate of one per cent per month until final repayment; and the said party of the first part hereby agrees to repay immediately all of said sums and payments, without demand, and also interest thereon at the rate of one per cent per month until fully repaid.

Second. In case the said party of the first part shall well and truly pay or cause to be paid at maturity, in gold coin as aforesaid, all sums of money so *borrowe* as aforesaid, and the interest thereon, and shall upon demand repay all other moneys secured or intended to be secured hereby and also the reasonable expenses of this trust, then the said parties of the second part, the survivor of them, their successors or assigns, shall re-

convey all estate in the premises aforesaid to the said party of the first part, at his request and cost.

Third. If default be made in the payment of any of said sums of principal or interest, when due, in the manner stipulated in said promissory note, or in the reimbursement of any amount herein provided to be paid, or of any interest thereon, then the said parties of the second part, the survivor of them and their or his successors or assigns on demand of said party of the third part, or its assigns, shall sell the above granted premises or such part thereof as in their discretion they shall find it necessary to sell, in order to accomplish the object of these trusts, in the manner following, namely: They shall first publish notice of the time and place of such sale, with a description of the property to be sold, at least once a week for three weeks in some newspaper published in said County of Kern, and may from time to time postpone such sale by publication in the same newspaper, or, at their option, by public announcement thereof at the time and place of sale so advertised, and on the day of sale so advertised or on the day to which such sale may be postponed may sell the property so advertised, or any portion thereof, at public auction, in the said County of Kern, to the highest cash bidder; and the holder or holders of said promissory note, their agents or assigns, the said party of the third part, or any other person may bid and purchase at such sale.

And the said parties of the second part, or the survivor of them or their successors or assigns, shall establish as one of the conditions of such sale that all bids and payments for the said property shall be

made in gold coin of the United States, and, upon such sales they execute to the purchaser a deed of the premises so sold, and out of the proceeds thereof shall pay:

Firstly. The expenses of such sale, together with the reasonable expense of this trust, including the compensation of the said parties of the second part as trustee hereunder in the sum of one hundred sixty and no/100 dollars, and in the sum of two hundred fifty and no/100 dollars, as compensation for such attorney as the said trustees may employ in carrying out the purposes of the trusts herein expressed, all in gold coin of the United States, which said amounts shall become due upon any default made by the said party of the first part in any of the payments aforesaid; and also such sum, if any, as said parties of the second part or said parties of the second part, or said party of the third part, shall have paid for procuring an abstract of or search of the title to said premises subsequent to the execution of this deed of trust.

Secondly. All sums which may have been paid by the said parties of the second part or said party of the third part, their successors or assigns, or the holders of the note aforesaid, and not repaid and which may then be due whether paid on account of incumbrances or interest of insurance, as aforesaid, or in the performance of any of the trusts herein created, and with whatever interest may have accrued thereon.

Thirdly. The amount due and unpaid on said promissory note, with whatever interest may have accrued thereon.

Fourthly. Any additional sums, with interest thereon, that may be hereafter borrowed and received by said party of the first part or either of them from the said party of the third part and evidenced by another promissory note or notes; and

Lastly. The balance or surplus of such proceeds, if any, to the said party of the first part, his heirs or assigns.

And in the event of a sale of said premises, or any part thereof, and the execution of a deed or deeds under these trusts, then the recitals therein of default and of publication of notice of sale, and of a demand that such sale should be made, postponement of sale, terms of sale, sale, purchaser, payment of purchase money, and of any other fact or facts affecting the regularity or validity of such sale, shall be conclusive proof of such default, and of the due publication of such notice, and that the sale was made on due and proper demand, and all of the facts recited in said deed; and any such deed or deeds with such recitals therein shall be effectual and conclusive against the said party of the first part, his heirs, assigns and all other persons as to such default, publication and demand and as to all other facts recited therein; and the receipt for the purchase money contained in any deed executed to the purchaser as aforesaid shall be a sufficient discharge to such purchaser from all obligations to see to the proper application of the purchase money according to the trusts aforesaid or otherwise.

And in the event of such sale being made and such deed or deeds being executed by one of said trustees only, then the recitals in said deed or deeds of the

death, resignation or removal of the other of said trustees shall be effectual and conclusive proof of such death, resignation or removal, and any such deed or deeds with such recitals therein shall be effectual and conclusive against the said party of the first part, his heirs or assigns and all other persons as to such death, resignation or removal.

And in the event of such sale being made and such deed being executed by any person or persons as trustees other than the said trustees herein named then the recitals in such deed or deeds of the death, resignation or removal of any trustee or trustees herein named and the appointment of their successor or successors shall be conclusive proof of such death, resignation or removal and of the due and legal appointment of such successor or successors.

It is expressly covenanted that the party of the third part may from time to time appoint other trustees to execute the trusts hereby created; and, upon such appointment and a conveyance to them by the parties of the second part, the survivor of them, their successors or assigns, the new trustees shall be vested with the title, interests, powers, duties and trusts in the premises hereby vested in or conferred upon the parties of the second part. Such new trustees shall be considered the successors and assigns of the parties of the second part within the meaning hereof.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

ALFRED W. BANNISTER (Seal)

State of California,
County of Kern,—ss.

On this 8th day of April, A. D., 1915, before me C. H. Farney, a Notary Public in and for said county and state, personally appeared A. W. Bannister known to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

Witness my hand and official seal, at my office in said county, the day and year in this certificate written.

(Seal)

C. H. FRANEY,

Notary Public in and for said County and State.

Recorded at the request of National Bank of Bakersfield, Apr. 23, 1915, at 15 min. past 4 o'clock p. m., in Vol. 295 of Trust Deeds, page 328 Kern County Records. Chas. A. Lee, Recorder; by Fred W. Lee, Deputy Recorder.

[Endorsed]: No. A 32. Equity. In the District Court of the United States of America in and for the Southern District of California, Northern Division. William H. Moore, Jr., as Trustee of the estate of Alfred W. Bannister, bankrupt, Complainant, vs. National Bank of Bakersfield, a corporation organized and existing under and by virtue of the laws of the United States, J. K. Russell and J. F. Galtes, Defendants. Bill of Complaint. Filed Jul. 15, 1915. Wm. M. Van Dyke, Clerk; by Chas. N. Williams, Deputy Clerk. E. U. Schroeter, Lucius K. Chase, Attorneys for Complainant, 443 Title Insurance Bldg., Los Angeles, Cal.

UNITED STATES OF AMERICA.

*District Court of the United States, Southern District
of California, Northern Division.*

In Equity.

Subpoena.

The President of the United States of America,
Greeting: To the National Bank of Bakersfield,
a Corporation, J. K. Russell and J. F. Galtes.

You Are Hereby Commanded, That you be and appear in said District Court of the United States aforesaid, at the court room in Fresno California, on or before the twentieth day, excluding the day of service, after service of this subpoena upon you, to answer a Bill of Complaint exhibited against you in said Court by William H. Moore, Jr., as Trustee of the estate of Alfred W. Bannister, bankrupt, who is a citizen of the State of California, and to do and receive what the said Court shall have considered in that behalf. And this you are not to omit, under the penalty of five thousand dollars.

Witness, The Honorable BENJAMIN F. BLEDSOE, Judge of the District Court of the United States, this 15th day of July, in the year of our Lord one thousand nine hundred and fifteen and of our Independence the one hundred and fortieth.

[Seal]

WM. M. VAN DYKE, Clerk.

By Chas. N. Williams, Deputy Clerk.

Memorandum Pursuant to Rule 12, of Rules of Practice for the Courts of Equity of the United States, Promulgated By the Supreme Court, November 4, 1912.

On or before the twentieth day after service of the subpoena, excluding the day thereof, the defendant is required to file his answer or other defense in the Clerk's office; otherwise the bill may be taken *pro confesso*.

WM. M. VAN DYKE, Clerk.

By Chas. N. Williams, Deputy Clerk.

United States Marshal's Office,
Southern District of California,—ss.

I Hereby Certify, that I received the within writ on the 15th day of July 15th, 1915, and personally served the same on the 16th day of July, 1915, on C. L. Claflin, Pres. Natl Bank of Bakersfield, F. J. Galtes & J. K. Russell, by delivering to and leaving with C. L. Claflin, President of Natl Bank of Bakersfield, F. J. Galtes and (J. K. Russell left with F. J. Galtes), said defendants named therein, personally, at the County of Kern, City of Bakersfield, in said district, a copy thereof.

Fresno, July 16th, 1915.

C. T. WALTON,

U. S. Marshal.

By S. J. Shannon,

Deputy.

To the Marshal of the United States for the Southern
District of California:

Pursuant to Rule 12, the within subpoena is returnable into the Clerk's office twenty days from the issuing thereof.

Subpoena issued July 15, 1915.

WM. M. VAN DYKE, Clerk.

By Chas. N. Williams,

Deputy Clerk.

Received 4-40 p. m., Jul. 15, 1915. U. S. Marshal's office, Los Angeles, Cal.

[Endorsed]: Marshal's Civil Docket No. 2721. No. A 32 Equity. U. S. District Court, Southern District of California, Northern Division. In Equity. Wm. H. Moore, Jr., etc., vs. National Bank of Bakersfield, et al. Subpoena. Filed Jul. 23, 1915. Wm. M. Van Dyke, Clerk; by Chas. N. Williams, Deputy Clerk. Eq. R. B. 239.

In Equity. No. A 32.

*In the District Court of the United States, in and for
the Southern District of California, Northern
Division.*

WILLIAM H. MOORE, JR., as Trustee of the Estate
of Alfred W. Bannister, Bankrupt,
Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a Corpo-
ration Organized and Existing Under and By
Virtue of the Laws of the United States; J. K.
RUSSELL and J. F. GALTES,
Defendants.

Answer.

Come now the above named defendants and answering the Bill of Complaint filed herein by William H. Moore, Jr., as Trustee of the estate of Alfred W. Bannister, a bankrupt, deny that at the time of the execution, or at the time of the recordation, of the deed of trust referred to in complainant's bill, and set forth as "Exhibit A" thereto, the said Alfred W. Ban-

nister was insolvent, or that at the time of the execution or recordation of said instrument the said National Bank of Bakersfield had reasonable, or any, cause to believe that the transfer of the title to said property under said deed of trust to the defendants Russell and Galtes, as trustees, or otherwise, for the purpose of securing the payment of the promissory notes in said bill set forth, would effect a preference in its favor over other creditors of said bankrupt in the same class, or that the enforcement of the lien of said deed of trust, or that the recognition thereof as a valid transfer of said property in said deed of trust described, would enable the defendant, National Bank of Bakersfield, as a creditor of said bankrupt, Alfred W. Bannister, or otherwise, to obtain a greater percentage of its debt from said bankrupt's estate than any other creditor or creditors of the same class.

Defendants deny that said deed of trust was executed by the said Bannister to the said defendants J. H. Russell and J. F. Galtes for the purpose, or with the intent, of defrauding the creditors of said Alfred W. Bannister.

Defendants deny that unless the relief prayed for in said Bill of Complaint be granted that the assets of said estate of said Alfred H. Bannister will be materially reduced by a large, or any, amount, or that the creditors of said estate will be deprived of their right to have applied to the payment of their respective claims the property in said bill described, or otherwise.

Wherefore defendants pray that complainant take nothing by his said bill, that the same be dismissed,

and that they have and recover their costs herein expended.

W. N. GOODWIN, and
HUNSAKER & BRITT,
Attorneys for Defendants.

[Endorsed]: Original. No. A 32. In Equity. In the United States District Court, Southern District of California, Northern Division. William H. Moore, Jr., as Trustee, etc., Complainant, vs. National Bank of Bakersfield, et al., Defendants. Answer. Service of the within Answer is hereby admitted this 16th day of September, 1915. Lucius K. Chase, Ernest U. Schroeter, Attorneys for Complainant. Filed Sep. 16, 1915. Wm. M. Van Dyke, Clerk; by R. S. Zimmerman, Deputy Clerk. W. N. Goodwin, and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal., Attorneys for Defendants.

In Equity. No. A 32.

*In the District Court of the United States in and for
the Southern District of California, Southern
Division.*

WM. H. MOORE, JR., as Trustee of the Estate of
Alfred W. Bannister, a Bankrupt,
Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a Corporation, Organized and Existing Under and By Virtue of the Laws of the United States, J. K. RUSSELL and J. F. GALTES,
Defendants.

Decree in Equity.

This cause came on to be heard at this term and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged and decreed as follows, viz.:

That certain deed of trust bearing date April 8, 1915, and executed by Alfred W. Bannister, purporting to convey to J. K. Russell and J. F. Galtes, as Trustees for the National Bank of Bakersfield, a corporation, certain real property situated in the County of Kern, State of California, and particularly described as

The south half ($S\frac{1}{2}$) of the southeast quarter ($SE\frac{1}{4}$) of section thirty-five (35), township 11 north, range 23 west, S. B. B. & M.,

which said deed of trust was recorded on April 23, 1915, in Volume 295 of Trust Deeds, at page 328 thereof, Kern County Records, constitutes a preference within the meaning of the United States Bankruptcy Act, and as such is hereby declared to be null and void and of no effect; and said J. K. Russell and J. F. Galtes are hereby ordered and directed to reconvey within thirty days from the entry of this decree said real property to Wm. H. Moore, Jr., as Trustee of the estate of Alfred W. Bannister, bankrupt;

And that complainant have judgment against defendants for his costs herein, taxed at the sum of thirty-six 00/100 (\$36.00) dollars.

Dated July 17th, 1916.

OSCAR A. TRIPPET,

District Judge.

Decree entered and recorded July 17, 1916. Wm.

M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk.

[Endorsed]: Original. In Equity. No. A 32. In the United States District Court, Southern District of California, Northern Division. Wm. H. Moore, Jr., as Trustee of the Estate of Alfred W. Bannister, a bankrupt, Complainant, vs. National Bank of Bakersfield, J. K. Russell and J. F. Galtes, Defendants. Decree in Equity. Filed July 17, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. 3 Eq. Jl. 40.

Whereupon, said Bill of Complaint, Subpoena, *ad* respondendum, Answer and Final Decree are hereto annexed, said Final Decree having been duly signed, filed and enrolled, pursuant to the practice of said District Court.

Attest, etc.

[Seal]

WM. M. VAN DYKE,

Clerk.

By F. F. Green,

Deputy Clerk.

[Endorsed]: No. A 32 Eq. In the District Court of the United States for the Southern District of California, Northern Division. Wm. H. Moore, Jr., Trustee, etc., vs. National Bank of Bakersfield. Enrolled papers. Filed July 20, 1916. Wm. M. Van Dyke, Clerk. By F. F. Green, Deputy Clerk. Recorded Eq. Jl. Book No. 3, page 40.

MOORE, Trustee,

vs.

NATIONAL BANK OF BAKERSFIELD.

Opinion of Court.

I shall not attempt in my decision in this case to state the facts nor the reasons for my decision, nor cite the law. The parties to the litigation know full well what the facts are, and all the authorities upon which I rely were cited in the argument.

First: The trust deed made by the bankrupt dated April 8, 1915, is void as being a preference.

Second: The chattel mortgage dated January 5, 1915, on an automobile and the chattel mortgage dated December 21, 1914, on a corrugated iron and frame warehouse building located on Southern Pacific Company's land at Wibel Orchard Siding, Kern County, California, are void because they were not recorded within a reasonable time and prior to forty days before the filing of the petition in bankruptcy and no possession was ever taken of said property.

Third: As to the so-called mortgages dated January 12, 1915, on 200 tons of grain and hay located at Bannister's Warehouse, Wibel Siding, Kern County, California, and January 12, 1915, on property at Bannister's Warehouse, corner of Main and D streets, Santa Fe Yards, Bakersfield, California. I am of the opinion that Bannister was a merchant; that the said property could not be mortgaged; that a recordation of said mortgages at any time would be have been futile; that they were valid between the parties as against creditors if possession had been taken under said alleged mort-

gages prior to the intervening of rights of third parties. That the petition in bankruptcy was filed May 6th, 1915. That no possession by the mortgagee of the said property was taken prior to that time. That the mortgagee never did take possession of said property. That the bankrupt continued in possession of said property and continued to conduct his previous business. That the payments made to the National Bank of Bakersfield after Apr. 23rd, 1915, were in the nature of unlawful preferences, and void.

Fourth: The claim made by the defendant that it had an equitable lien upon the property involved in the action is not well taken for the reasons:

That the alleged agreement to give a chattel mortgage upon said property was invalid because no chattel mortgage could be given on the same.

That the equitable lien was not valid because the defendant did not go into possession of the goods.

That the claim is not well made because there is a confusion of goods.

Fifth: I think this case falls within Section 60-a of the Bankrupt Act and the plaintiff is entitled to a ~~judgment~~ decree setting aside the alleged transfers and to recover the property.

[Endorsed]: No. B 94 Eq. S. D. A 32 Eq. N. D. U. S. District Court, Southern District of California. Wm. H. Moore, Jr., Trustee, etc., vs. National Bank of Bakersfield. Opinion of Court. Filed Jun. 19, 1916. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk.

*In the District Court of the United States, for the
Southern District of California, Southern Division.
Hon. Oscar A. Trippet, District Judge.*

No. A 32 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD, et al.,

Defendants.

No. B 94 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD,

Defendant.

**Statement of the Evidence in Conformity with Equity
Rule No. 75.**

Stipulated that the two cases above entitled be tried at the same time and when submitted to the Court such evidence only as may be material, relevant or competent to the respective cases shall be considered by the Court in reaching a decision; also stipulated, with the approval of the Court, that all adverse rulings be deemed excepted to. Pursuant to stipulation and rule 50, the Court appointed a reporter, whose fees for reporting these cases and transcribing the testimony are to be taxed ultimately as costs.

Testimony of Alfred W. Bannister, for Plaintiff.

ALFRED W. BANNISTER, sworn as a witness on behalf of plaintiff, testified as follows:

I am the bankrupt for whose estate the plaintiff is

(Testimony of Alfred W. Bannister.)

trustee, and have resided in Southern California, including Los Angeles and Bakersfield, twenty-one years. For more than two years last past I have been engaged in the hay and grain business, buying and selling at retail and wholesale, and was so engaged during the year 1915. The form of bill head used during that time was as follows (Plaintiff's Exhibit 1):

"Terms Spot Cash Los Angeles office with
D. P. Flory Co.

A. W. BANNISTER
Hay and Grain Merchant

Warehouse Bakersfield, Cal."
Santa Fe yards

My letter head also has the same phraseology at the top. I was in Los Angeles about April 1, 1915—presumably Mr. Smith, secretary of the Los Angeles Hay Storage Co., sent for me to come down. When I came down I went to the warehouse of the Los Angeles Hay Storage Co. and saw Mr. Smith there. On February 17th of this year I testified before the Referee in Bankruptcy in a controversy between the Security National Bank of Los Angeles and the Los Angeles Hay Storage Company, at which time I testified as follows:

"On or about April 1, 1915, the Los Angeles Hay Storage Co. was indebted to me as an individual to the amount of about \$17,000. Sometime during the fore part of April, when I received a call from Mr. Smith of that company, I came down to Los Angeles from Bakersfield as soon as I could make business arrangements. I went to the office of the company on Macy street, where I talked to Mr. Smith a few minutes

(Testimony of Alfred W. Bannister.)

about the condition of affairs and he suggested that I call on Mr. Flory. Prior to that time I had known over the phone and probably by letter that Flory had been consulted concerning the financial condition of the Los Angeles Hay Storage Co. Smith and I went to Flory's office and had a conference with him and Mr. Mead, at which we talked of things in general and the condition of the company. Mr. Flory said he thought the easiest way out of the difficulty was for the company to go into bankruptcy immediately, to which I objected very strongly and thought the affairs of the company could be fixed up. Then Mr. Flory began to formulate a plan he had talked over with Mr. Smith, by which Flory was to take over the management of the concern himself. There was nothing definite as to that arrangement, and after talking with Mr. Mead a little bit, Mead went down to see Mr. Zombro of the Security Bank. I told Mr. Mead in his office that I did not care to put the thing through bankruptcy and that we might find some means where we could work it out. Previous to that Mr. Flory had said that if I would waive my claim of \$17,000 we might be able to save the company."

I was down here around the 1st of April, prior to April 6th. I received a letter from Mr. Flory about April 7, 1915. At that time I was doing business with the defendant bank every day and was in the bank practically every day. I do not think I called their attention to this letter, as it was none of their business. At that time the bank held four chattel mortgages securing something like \$10,500.00 indebtedness of mine

(Testimony of Alfred W. Bannister.)

to them, which chattel mortgages were unrecorded. I did banking business with them every day, but did not necessarily report my affairs to them. I think I returned to Bakersfield immediately after my interview with Mr. Flory about April 1st. I couldn't state when I next saw Mr. Russell, the cashier of the defendant bank, but if I had any banking business I went to the bank that day. I don't think I then explained to Mr. Russell what had taken place in Los Angeles. I returned to Los Angeles in about three weeks, I think, after April 6th.

At the first meeting of my creditors I testified before the Referee in Bankruptcy as follows:

"I have been in the habit of transacting my business with the National Bank of Bakersfield through J. K. Russell. I used to see him every day, but I didn't see him on April 23, 1915, for I believe I was down at Los Angeles at that time. We had made arrangements to put somebody in as manager of the Los Angeles Hay Storage Co., and then Mr. Wells went and attached my house.

Q. After your home was attached, what did you say to Mr. Russell?

A. Well, I don't know. I didn't tell him anything in particular. I told him that they had attached my home here; and by that time the board of directors had been around and I had given them a whole lot of information.

Q. What did you say to them on or about that time about the chattel mortgages that you had given before that time?

(Testimony of Alfred W. Bannister.)

A. I didn't tell them anything in particular.

Q. What did they say to you about it?

A. They said that we should file them, put them on record.

Q. Did you communicate with him by telephone?

A. No, I don't think so.

Q. From Los Angeles?

A. No, I don't think so.

Q. Did you write him and tell him that you were attached?

A. No, my wife wrote me and she told me that the home was attached, and I got ready, and probably went into the bank to see him or telephoned him that I had to go to Los Angeles right away.

Q. And that your home had been attached?

A. That my home had been attached, yes.

Q. Was that on the 23rd or the day before

A. Oh, I could not tell; it was around there, about that time.

Q. But when you had received this letter from your wife, you then went to the bank and explained the situation to them?

A. Yes, sir.

Q. Do you know what you said, and what they said?

A. No.

Q. You don't remember?

A. Only that they were going to put all that stuff that I had given them on record.

Q. Did you know at that time that the bank had not recorded the chattel mortgage?

(Testimony of Alfred W. Bannister.)

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"I have been in the habit of transacting my business with the National Bank of Bakersfield through J. K. Russell. I used to see him every day, but I didn't see him on April 23, 1915, for I believe I was down at Los Angeles at that time. We had made arrangements to put somebody in as manager of the Los Angeles Hay Storage Co., and then Mr. Wells went and attached my house.

Q. After your home was attached, what did you say to Mr. Russell?

A. Well, I don't know. I didn't tell him anything in particular. I told him that they had attached my home here; and by that time the board of directors had been around and I had given them a whole lot of information.

Q. What did you say to them on or about that time about the chattel mortgages that you had given before that time?

(Testimony of Alfred W. Bannister.)

A. I didn't tell them anything in particular.

Q. What did they say to you about it?

A. They said that we should file them, put them on record.

Q. Did you communicate with him by telephone?

A. No, I don't think so.

Q. From Los Angeles?

A. No, I don't think so.

Q. Did you write him and tell him that you were attached?

A. No, my wife wrote me and she told me that the home was attached, and I got ready, and probably went into the bank to see him or telephoned him that I had to go to Los Angeles right away.

Q. And that your home had been attached?

A. That my home had been attached, yes.

Q. Was that on the 23rd or the day before

A. Oh, I could not tell; it was around there, about that time.

Q. But when you had received this letter from your wife, you then went to the bank and explained the situation to them?

A. Yes, sir.

Q. Do you know what you said, and what they said?

A. No.

Q. You don't remember?

A. Only that they were going to put all that stuff that I had given them on record.

Q. Did you know at that time that the bank had not recorded the chattel mortgage?

(Testimony of Alfred W. Bannister.)

A. They were certainly not. Now, then, in the fifteen years I have been in Bakersfield, I go to the bank at any time and got three or four or five thousand dollars. I would say, I have got twenty-eight or thirty mules—and I would say do you want a chattel mortgage on the mules, or a trust deed on my real estate—anything that you want, you can have. And they would hold that and never put that on record. They have not had to. I have always lived up to my obligations, and there has not been any necessity at all for them to think about protecting the money that I had borrowed from them, personally.

Q. And it has always been your understanding that if anything was to happen—

A. They were to put them on record if anything happened, for stock in trade, corn, hay, barley, real estate, wagons, all my personal property.

Q. That has been your general understanding during all this period?

A. It has always been during fifteen years.

Q. And with reference to these particular mortgages, you had this same understanding?

A. The same understanding; we always had that.

Q. That they were not to be put on record?

A. It was up to the bank to do it any moment, to put them on record if they thought that they were not fully protected—it was up to the bank to do it.

Q. On the 8th day of April, 1915, you were owing the bank somewhere in the neighborhood of ten thousand dollars?

A. Yes, sir, I think so.

(Testimony of Alfred W. Bannister.)

Q. And did you voluntarily go to the bank on that day and make them a deed of trust?

A. I went voluntarily to them and told them that they should have what protection I could give them.

Q. Did you tell them at that time that you were having trouble with your creditors?

A. No, I had no trouble with my creditors up there.

Q. Did you explain to them that the Los Angeles Hay Storage Company was having trouble?

A. They owed me seventeen thousand dollars and could not get the money to pay me.

Q. Did you explain to them that the Hay Storage Company was having trouble with its creditors?

A. Yes—

Q. What else did you say?

A. Conversations were taking place every day; I cannot recall.

Q. Did you explain to them that you were a heavy stockholder of the Hay Storage Company, and as such were liable to the creditors?

A. They knew that I had stock.

Q. And they knew that under the statute you were liable?

A. I suppose they knew. I don't know that I made a definite statement as to that.

Q. Did they know that you owned stock in the Los Angeles Hay Storage Company?

A. Yes, sir.

Q. Did they know that you owned 299 shares of that stock?

(Testimony of Alfred W. Bannister.)

A. I don't know that they knew the number of shares.

Q. Did they know that you owned the majority of the stock of the Hay Storage Company?

A. No, I don't think so.

Q. Did they ever ask you how many shares of stock you owned?

A. No.

Q. They simply knew that the Hay Storage Company was in trouble down here with its creditors and that you were a heavy stockholder in that concern?

A. Yes, sir.

Q. And that you were the president of the company?

A. Oh, Yes.

Q. And that you were one of the board of directors?

A. Yes, sir.

Q. And that in case you should have to pay your pro rate of the obligations of the Hay Storage Company, you were insolvent?

Mr. NOLAN.—I think that is calling for the conclusion of the witness.

The REFEREE.—I don't see why you don't let him tell some of the facts in this case. You are putting words into his mouth a good deal. Let him tell the facts. He is perfectly willing to tell.

The WITNESS.—I will tell you everything that you ask me.

The REFEREE.—Let the witness do the testifying.

Q. What was said by you to the bank officials in

(Testimony of Alfred W. Bannister.)

reference to your insolvency at that time, on the eighth day of April?

A. About that time I talked to Mr. Zombro down here and to Mr. Newby, and I told them that I could get through and meet all my obligations in Bakersfield, if I was left alone. And I told them at the National Bank of Bakersfield that I could, but they forced me into involuntary bankruptcy, and there was no help for it at all. And I related the conversation to the bank there as to the solvency; at the time, I could have paid all my liabilities—every one of them.

Q. Could you have paid your portion of the indebtedness of the Hay Storage Company?

A. Well, they owed me seventeen thousand dollars, you understand, and I don't know that I owed them anything.

Q. I am speaking of the creditors of the Hay Storage Company.

A. Well, there was seventeen thousand dollars to be divided among them.

Q. You know, as a matter of fact, Mr. Bannister, that you were liable to each of the creditors of the Hay Storage Company for your pro rata of the indebtedness?

A. Well, yes, it is a corporation matter?

The REFEREE.—Yes.

A. Yes, that is the way I understood it, and the others were also liable for a share of the debts of the corporation.

Q. You understood that you were liable for 299 shares—you had 299 shares, hadn't you?

(Testimony of Alfred W. Bannister.)

A. Yes, sir.

Q. What I want to know is whether you explained those things to the bank at Bakersfield?

A. I didn't know at that time that there was any stockholders' liability; that I would be cinched to that extent. I didn't know enough about corporation matters to know that I would be liable under the stockholders' liability, excepting as I understood it from Mr. Mead and Mr. Zombro, not to the creditors, I understood that it was to the bank; that is the only liability that I thought I had.

Q. By The REFEREE.—That you had endorsed?

A. Yes, and not to the whole of the creditors of the company.

Q. By The REFEREE.—When you were talking to the bank at Bakersfield, you were talking about your indebtedness on which you were a maker or endorser?

A. Yes, sir.

Q. By The REFEREE.—And you didn't mention any other?

A. No, I didn't mention any other creditors down there.

Q. By The REFEREE.—But you did tell those people at Bakersfield when you went there, at the time that you put on the mortgage, that the attachment had been run against your property?

A. Against my home, and I had been out of my way to explain it to Mr. Zombro and Mr. Mead and also Mr. Newby, too. We put it in the notes, to have a manager appointed to carry all the matters out, and

(Testimony of Alfred W. Bannister.)

I waived all claim to my money for twelve months, provided all of the creditors didn't do anything with the accounts for six months; and then begin paying on the indebtedness. But in the meantime use that money for buying and selling and making a profit by which each of the creditors could be paid. There was within eight or nine hundred of it all signed up, and Mr. Wells goes and attaches my home, and the whole thing went into bankruptcy. And I had come down, and that was the understanding when I left here that all of those creditors were signing up.

Q. By The REFEREE.—Did you go back and tell the bank that?

A. I believe I did. I told them that everything was satisfactory. I explained what had taken place down here, and that the thing was going through very well, I mean, not so badly with the Hay Storage Company, and that we might get through, and we could get out fifty per cent any way, and pay up the creditors in full.

Q. By The REFEREE.—And you went back and told those facts to the bank at Bakersfield?

A. Yes, and that we were going to do that.

Q. By The REFEREE.—And right after you told them that, and that this attachment had been run, they put their chattel mortgages on record?

A. Yes, they had them, and they put them on record when my home was attached, that is the time.

Q. By The REFEREE.—Did they come over to see you, or did you go to the bank?

A. I went to the bank.

(Testimony of Alfred W. Bannister.)

Q. By The REFEREE.—Just as soon as you were attached you went to the bank?

A. Yes, or telephoned—probably I went up there.

Q. By The REFEREE.—They hadn't sent for you?

A. No, I am in the bank every day.

Q. By The REFEREE.—They didn't send for you?

A. No, I don't think so. No, they didn't send for me.

I don't remember what Mr. Russell said at the time I gave the bank the trust deed of April 8, 1915. I remember telling him that I had twenty acres of land on the San Amelia Range, and if he wanted he could have a trust deed. I spoke about giving the security myself personally on that twenty acres of land on my personal obligations. I was protecting them. If you had been my personal creditor I would have protected you in the same manner. I don't know when I had last given the bank a statement of my assets and liabilities. I took him down a warehouse receipt, showed him that there was lots of corn and also showed him the hay that was on hand. At another time I took him a trial balance, showing book accounts and everything, all my assets and liabilities. My stock in the Los Angeles Hay Storage Co. I carried as personal property. I haven't a copy of that statement now. I have done business with the banks up there for fifteen years and they have taken my word for what I have told them. The Los Angeles Hay Storage Co. is a corporation and my business at Bakersfield is personal. If I personally borrow \$500 I am not going to give it to a corporation when I know that I owe it to you per-

(Testimony of Alfred W. Bannister.)

sonally. I have met my obligations with my creditors in Bakersfield, but down here the accounts have run since 1912. I have never had anything to do with the running of this company only to pour money into it. I thought they were going to try to make the company a success. Since the involuntary petition in bankruptcy has been filed I have paid accounts just as I had money coming in of the farmers I bought from. The Bakersfield bank had mortgages on my stock and they took it and sold it. There was nothing that I could do. They took possession about the beginning of May sometime.

Q. Now, did they take possession subsequent to the 5th of May?

A. Just about that time.

Q. Do you know whether it was on the 5th of May or before?

A. No, I don't know.

I don't know what I said to the bank about their taking possession under these mortgages. In all probability I told the bank that I was not going to make it go down here with the trustee proposition. I don't recollect the conversation at all. They told me they were going to sell all that stuff and they took possession of it and had somebody in possession all the time, reporting every sale that was made, every dollar that was sold. They had the list made out each day. It was out of my hands entirely. Every shipment on the railroad, and every car load sent there, the bank held the records for. They put a man in possession immediately after the conversation. I expect they received something like \$8500 from the sale of the property. I

(Testimony of Alfred W. Bannister.)

was not in financial difficulties—the Los Angeles Hay Storage Co. was and they put me through bankruptcy. I told the bank what the trustees had agreed upon down here and I told them that things were going on very nicely. As the bank received the money from the sale of the mortgaged property I would get credit on my books in order to keep them straight. The bank notified me at different times that they received so much money from the sale of the goods and that they cancelled my obligations to that extent and I have credited it up to bills payable. And when I prepared my schedule in bankruptcy I still owed them something like \$1200 or \$1300. When the petition in bankruptcy was filed May 5th I owed the Bank of Bakersfield about \$10,000.00.

By The REFEREE.—So that really they collected all that money from their security between the date of the filing of the petition and the date that you filed your schedule?

A. Yes, I guess that is so.

Prior to April 27th or 28th I owned lots 69 and 70, tract 1658, Los Angeles County. I conveyed this property to one D. Hansen, one of my creditors, somewhere about April 27th or 28th, around the time that my home was attached. I had the deed returned to me at Bakersfield and never delivered it to Mr. Hansen.”

The COURT.—(Referring to all the foregoing testimony.) Did you so testify?

A. Yes, sir.

Q. That is the truth as you stated it there?

A. Yes, sir.

(Testimony of Alfred W. Bannister.)

Mr. JANEWAY.—I move to strike out all this testimony on the ground that it has not been connected up with the defendant in this case and is entirely immaterial; and this line of interrogation, if it shows anything, shows that the counsel at the time the interrogation was taking place put the answers into the witness' mouth to such an extent that even the Referee protested against his action; and, furthermore, the answers show that if he said anything to the bank at Bakersfield about it, he told them everything down here was proceeding satisfactorily; and, furthermore, there is no definite date fixed by the answers when he told the bank at Bakersfield about these conversations in Los Angeles, and there is some testimony there indicating that the conversations he had with Mr. Russell were subsequent to the 23rd of April, when the mortgages were recorded.

The COURT.—That would go to the weight of the testimony, Mr. Janeway, I think, and in this kind of a case you are entitled to ask leading questions and direct the witness' attention very particularly. The objection is overruled.

By Mr. CHASE.—It is proper at this time to add that the witness comes as an unwilling witness.

The COURT.—That don't make any difference.

(WITNESS, continuing.) Upon my return to Bakersfield after talking to Mr. Flory and Mr. Zombro, on April 1st, at Los Angeles, I didn't tell Mr. Russell the details of the conversations with those men, but I told him things were getting along satisfactorily down here. That was at the time Mr. Zombro, Mr.

(Testimony of Alfred W. Bannister.)

Newby and Mr. Mead were to act as trustees for the Los Angeles Hay Storage Co. I don't know that I told Russell they were to act as trustees or went into the details of it, but simply that things were going along very nicely at that time. At the time we had the interview at the Security National Bank in which Mr. Flory, Mr. Zombro, Mr. Mead, Mr. Smith and myself were present, there was a rough statement of the assets and liabilities of the Los Angeles Hay Storage Co. passed around. I didn't handle the paper and don't recollect the figures, but I saw them hand a paper to Mr. Zombro during the conversation. At that conversation of April 1st, Mr. Flory spoke of the condition of the company, and he had talked it over with Mr. Smith, and had concocted a plan by which he would take charge of the company as manager, with Mr. Zombro and Mr. Newby of the Pasadena Bank and Mr. Mead as trustees. My books showed that the company owed me \$17,000, and the books of the company did not show that amount, but there were several carloads that had not been entered up to my credit. They wished me to waive my claim for a year and get the other creditors to waive their claims for six months, and all the moneys brought in were to go into the bank and be used to pay merchandise debts to run the business of the company without any further trouble from any of the creditors, and everybody would waive their claims for six months, and I was to waive mine for one year. If the thing did not go through satisfactorily, then I was to get my pro rata of the \$17,000 as one of the creditors. Mr. Flory was quite satisfied that

(Testimony of Alfred W. Bannister.)

he could carry the thing through, and, if it was necessary, to put a little more money into it. He spoke to Mr. Zombro and Mr. Newby that day I think relative to getting a little more money to finance the concern and get it on a good footing. I did waive my claim in writing, and then the condition of the company was not bad. If I did not waive my claim the company was insolvent. But I didn't go through the books personally; I took Mr. Smith's and Mr. Flory's figures for it. I didn't know the exact amount. I think the liabilities, including my \$17,000, exceeded the assets something like \$25,000 or \$28,000. When I returned to Bakersfield I did not undertake particularly to secure my creditors there, for I understood that the thing here was going along swimmingly. I don't recollect distinctly where or when was the first meeting I had with Mr. Russell after that. It must have been in the bank. But I did not tell him anything definite about the details of the business here; but I did tell him that things were going nicely down here. The conversation was sixteen or eighteen months ago. I have said that I stepped into the bank probably and made a deposit and he might have been busy and I simply said that things were going satisfactorily in Los Angeles and that is about the amount of the conversation. I don't think that I had theretofore told him that we were having trouble in Los Angeles, except that I couldn't get any money on my \$17,000 claim. I had told him that they owed me a big amount, but I did not say what the amount was. I do not think he knew the approximate amount of it. I have no distinct recol-

(Testimony of Alfred W. Bannister.)

lection as to what occurred at the time I gave the trust deed on April 8th. I probably volunteered it. It was given for a debt that I already owed the bank. I don't recollect that I said anything particularly. I had that land clear and probably told Mr. Russell if he wanted to take a mortgage on it he could do so. I offered anything to the bank during the years that I did business with them. D. Hanson is a friend of mine, a mining man. On April 10, 1915, I wrote to him the following letter: (Plaintiff's Exhibit 2.)

"April 10, 1915.

D. Hanson, Esq.,

Dayton, Nev.

My dear Hanson:—

I have been down to Los Angeles to try and straighten matters out to some extent. They owe me personally \$14,000.00 for hay and grain shipped from Bakersfield; the whole of this sum has been put in escrow for six months, on condition that the other creditors will not press suit. This will enable Mr. Flory, who has been appointed manager by the Pasadena National Bank, Security National Bank and Mr. Meade, who have been appointed trustees for the time being, or for at least one year, to adjust matters satisfactorily.

There is to be a creditor's meeting this afternoon in Los Angeles at three o'clock, but it is not necessary for me to be present as I have signed a waiver to my claim of \$14,000, which if the creditors will not agree to our terms and will want to wind up the business of

(Testimony of Alfred W. Bannister.)

the Los Angeles Hay Storage immediately I will get my pro rata of the assets out of the settlement.

With this amount of money going out of my business here in Bakersfield it is keeping me jumping to pay my accounts, but I am getting along very nicely and have no fear of the ultimate outcome in Bakersfield if no complications arise in Los Angeles.

However I am still of the idea that I shall turn over the house to you, as it is the only available asset that I have free. It is necessary for me to let things rest for a week or so in order to enable things to quiet down because if this deed was put on record now, some of the creditors of the Los Angeles Hay Storage might think I was trying to dodge the issue of meeting my obligations, and this I am certainly not trying to do. ***"

On April 16, 1915, I sent the following letter to Mr. Syminton: (Plaintiff's Exhibit 3.)

"April 16

Mr. G. J. Syminton,
520 Douglas Bldg.,
Los Angeles, Cal.

My dear Sir:—

I enclose you herewith a copy of the letter received from Hanson which speaks for itself.

This was written after the interview which Hanson had with you, and according to his assertion you stated my Hollywood property was worth only \$10,000.

I certainly take exception to this, as you cannot be intimate with the values of property during the last two years in the vicinity of my home. The property

(Testimony of Alfred W. Bannister.)

has a frontage of 120 feet by 185 feet deep, and with the amount of improvements I have put on it, cement sidewalks, cement walks around the house, cement basement, two story garage, etc., the whole value of the property is enhanced thereby, with the natural increase of the land values in the vicinity. There is no house similar to mine with a lot 60 by 185 feet, which would not bring \$8,000 to \$9,000, with a forced sale, and the improved lot adjoining (the tennis court) would certainly be worth \$5,000 and A No. 1 value; in fact you cannot buy lots of this size around there for that amount.

Reversing my position: You might have a fair value set upon some of your property and I, without any actual knowledge of the increase in values or otherwise might make a misleading statement detrimental to your interests if any one should ask me as to the real values.

From the tone of Hanson's letter it would appear that I was trying to beat him. If I wished or had any desire to do that, I have the original note in my possession and he has absolutely no hold upon me in any way. When he left Bakersfield he was satisfied with the arrangement I had to protect him in case of anything happening through business entanglements of the Los Angeles Hay Storage Company, and now I receive this STINGER.

I am not going to squeal about my business trouble in Los Angeles, but sufficient to say that I am in the hole \$14,000 of which I do not expect to see a cent. This is for hay and grain shipped from Bakersfield and

(Testimony of Alfred W. Bannister.)

owed to me personally by the Los Angeles Hay Storage Company.

I have to waive claim to this to try and help the creditors; I have kissed it goodbye, or more preferably kicked it goodbye.

It is most regrettable that Hanson should have written a letter like his to me and it hurts.

Yours very truly,"

Q. By Mr. CHASE.—Did the National Bank of Bakersfield know prior to April 23 that you had had any trouble with the Los Angeles Hay Storage Company?

A. I don't think they did. The thing had been going satisfactorily from the meeting we had with Mr. Flory early in April, and they were working on that thing here. Mr. Zombro and Mr. Newby and Mr. Mead were to act as trustees.

Q. Did you tell them that fact?

A. I don't recollect that I did.

Q. Are you certain that you did not?

A. No, I wouldn't be quite certain about it.

Q. You don't remember whether you told them about your trouble with the Hay Company or not?

A. I told them I couldn't get the money from them, and that I was waiving my account.

Q. You told the bank that you couldn't get any money from the Hay Storage Company?

A. I probably told them that sometime later on in April.

(Testimony of Alfred W. Bannister.)

Q. On what occasion did you tell them that?

A. I don't remember.

Q. Did you tell that to Mr. Claflin—that is the name of another officer of the bank?

A. Yes. I think he is the president. No; I didn't speak to Mr. Claflin.

Q. Your business was done entirely with Mr. Russell?

A. Yes.

Q. It was to Mr. Russell that you explained that you couldn't get your money out of the Los Angeles Hay Storage Company?

A. Yes.

Q. When was that, about? Was it before you went to Los Angeles on April 1st or afterwards?

A. I have no recollection of the date.

Q. Can you give me approximately the date?

A. Sometime in April, probably. I had been trying to get a little money out of them and I telephoned to Mr. Smith, and he always promised me to let me have some.

Q. Wasn't it after about April 8, at the time you gave this trust deed, that you had this conversation?

A. It was around about that time sometime.

Q. And it was on April 10th that you wrote to Desbro Hanson the letter in evidence? Was it before or after you wrote the letter to Hanson that you told Mr. Russell that you couldn't get your money out of the Los Angeles Hay Storage Company?

Mr. JANEWAY.—I object to that as assuming a condition of facts not shown to have existed. I have

(Testimony of Alfred W. Bannister.)

not understood that he told Russell that he couldn't get his money. I understood that he told him he was having some difficulty to get it, but that he would get it.

Mr. CHASE.—The record will show that he said to Mr. Russell that he could not get his money.

The COURT.—Overruled.

A. I don't recollect.

(WITNESS, continuing.) During January, February and March, 1915, I was conducting my business in Bakersfield on the corner of 14th and D streets, where I had a warehouse known as Bannister's Warehouse, and a half block containing ten or eleven lots in connection with the warehouse, and I also conducted business in a warehouse at Bannister Siding, twelve miles out of Bakersfield, and one on Wyble Siding out of Bakersfield.

(Witness produces two original mortgages, each dated January 12, 1915, executed by him to the defendant bank.) The goods mentioned in this mortgage executed by me to secure notes aggregating \$10,500 were in the Wyble warehouse at that time and were all the goods that were then in that warehouse. The other property mentioned in the mortgage was approximately all in the Bannister warehouse on January 12th. There is a little stuff moving in and out of the warehouse all the time. I might make a shipment of a carload of stuff and there would be more coming in. It was approximately covered by this mortgage. Of course, I couldn't tell to a few sacks.

Q. By The COURT.—It was coming in and going out all the time?

(Testimony of Alfred W. Bannister.)

A. It was going in and out; yes.

(WITNESS, continuing.) The property referred to in this other mortgage—being 200 tons of grain and hay in Bannister's warehouse at Wyble Siding—was in that warehouse on January 12th. The goods mentioned in that mortgage and the 200 tons of grain and hay mentioned in the other mortgage of the same date included, I believe, all the property in those two warehouses. I had also a third warehouse. My business was conducted from the Bakersfield warehouse and I loaded hay out of the other warehouses by sending men down from Bakersfield. I conducted my principal business from the Bakersfield warehouse and there and at Wyble was where I had my stock in trade. I had just an ordinary office built into the warehouse in Bakersfield, with a desk and telephone.

(At this time the two mortgages above referred to were introduced and received in evidence as Plaintiff's Exhibits 4 and 5, being in the same form as Exhibit "A" attached to this statement and executed by Bannister in favor of the defendant, being under date of January 12, 1915, one describing Bannister as a "merchant" covering 200 tons of grain and hay located at Bannister's warehouse, Wyble Siding, Kern County, and given as security for his note for \$1500.00 of the same date, which mortgage was recorded April 23, 1915; the other, being Plaintiff's Exhibit No. 4, the so-called "blanket" mortgage of the same date, between the same parties, in the same form, recorded April 23, 1915, covering certain personal property situated at

(Testimony of Alfred W. Bannister.)

Bannister's warehouse, corner 14th and D streets, Santa Fe yards, Bakersfield, as follows:

White

Egypt corn	3345 sacks	410000"	\$30.00	\$6,000.00
Red " "	768 "	96000"	26.00	1,248.00
Feterita	315 "	37800"	26.00	491.40
R. Barley	750 "	57750"	28.00	808.50
Barley	145 "	14500"	26.00	188.50
Oats	385 "	30800"	28.00	431.20
Shelled corn	95 "	10000"	30.00	150.00
Wheat	74 "	10360"	30.00	155.40
Bale ties	975 bales		1.15	1,120.00
Alfalfa	1877 "	236150"	7.00	826.50
Grain hay	1134 "	140600"	8.00	562.40
Ear corn in crib		142200"	22.00	1,562.00

And certain property situate at Wyble warehouse as follows:

Red Egypt corn	1060 sacks	126700"	26.00	1,647.10
Barley hay	445 bales	52000"	8.00	208.00

Total, \$15,399.00

and given as security for his promissory notes of the following dates and amounts: November 11, 1914, \$2500.00; December 1, 1914, \$1,000.00; December 9, 1914, \$1500.00; December 21, 1914, \$1500.00; January 4, 1915, \$1500.00; January 5, 1915, \$1,000.00; January 12, 1915, \$1500.00.)

(WITNESS, continuing.) On December 21, 1914, I borrowed from the National Bank of Bakersfield \$1500 with which to buy hay and corn from the Hein-

(Testimony of Alfred W. Bannister.)

rich, Randolph & Gully ranches, and gave that bank a note for that amount secured by a chattel mortgage, which has never been recorded, covering the produce I was buying from those ranches, and as additional security for the same loan at the same time—December 21, 1914—I gave them a chattel mortgage on the corrugated iron and frame warehouse building at Wyble Orchard Siding, which mortgage was recorded April 23, 1915.

(Stipulated that the Wyble Siding warehouse was a corrugated iron building erected on leased ground, by the terms of which lease the lessee could remove the building upon the termination of the lease.)

(At this time there was introduced and received in evidence as Plaintiff's Exhibit 6 said chattel mortgage dated December 21, 1914, recorded April 23, 1915, executed by Bannister, therein described as a "merchant," in favor of the defendant bank in the same form as Exhibit "A" attached to this statement, covering a corrugated iron and frame warehouse building located in the Southern Pacific Co.'s land siding at Wyble Orchard Siding, Kern County, California, as security for Bannister's promissory note in favor of defendant for \$1500.00, dated December 21, 1914.)

(WITNESS, continuing.) The conversation at that time was that of an ordinary business transaction. I wanted the money to purchase these different lots of corn and I had the warehouse free and said they could have a mortgage on that if they wished it. That is about all the conversation we had about it. There was nothing said particularly about recording or not re-

(Testimony of Alfred W. Bannister.)

cording the mortgages. It was up to Mr. Russell at any time to record the mortgage if he wished to. That has always been the understanding with the banks ever since I have been in business—with the Bank of Bakersfield, the Security Trust Company and the National Bank of Bakersfield. It was understood that at any time they saw fit they could always secure themselves by recording these mortgages and putting them on record.

Q. Did you notify any of the creditors, Mr. Bannister, that you had given chattel mortgages to the National Bank of Bakersfield which had been withheld from record by that bank?

A. Not to my best knowledge.

Q. You don't remember that you ever notified any of them of that fact?

A. I don't think so.

Q. By The Court.—A while ago you said it was understood that these mortgages should be recorded. Do you mean to say by that that you and Russell talked it over and in that way you understand the conversation?

A. In doing business at Bakersfield—I wanted to get money to run my business at times and wished to buy hay and grain as the new crops came in, and I would just give them a chattel mortgage on all my personal property which they could hold in case of my death or anything. They could always record them. I have done that for seventeen years.

Q. But you say you had an understanding with

(Testimony of Alfred W. Bannister.)

Russell that he could record the mortgages that the bank had?

A. At his pleasure at any moment or at any time.

Q. Now, you say that that was an understanding, and you mean by the understanding that you and he had a conversation about that?

A. Yes.

The COURT.—Go ahead.

Mr. JANEWAY.—I would like to ask right there, if I may, if he will state what the conversation was.

Q. By The COURT.—State what the conversation was between you and Russell as nearly as you can about recording these mortgages. I think it has been in the record once. You need not state “what I said” and “what he said,” but what the conversation was, as near as you can.

A. If I wanted a thousand or fifteen hundred dollars or two thousand dollars I stated what it would be for, and that the farmers would probably want so much money on the produce that I wished to buy. I would make a contract with the farmer and see what money he wanted and go to the bank and get what money was necessary to handle the stuff. It would be brought to the warehouses and sometimes it was mortgaged out in the field and a chattel mortgage taken, or as soon as it was delivered into the warehouse or warehouses.

Q. By Mr. CHASE.—That is hardly responsive to Your Honor’s question, and I wish the reporter would read the question again.

Q. By The COURT.—Now, when you went to

(Testimony of Alfred W. Bannister.)

Russell to get money and gave the mortgage for it, what was said about the recording of the mortgage?

A. There was nothing definitely stated at any time. I must have told Mr. Russell that if he saw fit at any time to put the mortgages on record.

Q. By Mr. JANEWAY.—Did you tell him that?

A. I think so; yes. I must have told him so.

The COURT.—I think that answers the question. I think that is about all the witness knows about it, too.

By Mr. CHASE.—Was credit extended to you by sundry of your present creditors between January 12, 1915, and April 23, 1915?

Mr. JANEWAY.—Objected to as not within any issue presented by the pleadings. There is nothing alleged in the original complaint with respect to that and there was an amendment made by stipulation which recited certain conclusions of law respecting these creditors, and the objection to those conclusions was made by way of answer, and there were further objections to the amendment on the ground of uncertainty. They have never seen fit to amend and the objection has never been ruled on, though the answer to the amendments has been on file for two months. That is why I am objecting to this testimony as not responsive to the issues.

The amendment to which I refer is this: (Reading amendment.) We have objected to that amendment in the following manner by the answer to the bill and to the bill as thus amended. (Reading a portion of the answer.) And those objections have never been ruled on, and they point out specifically the objections we

(Testimony of Alfred W. Bannister.)

make to the allegations which are mere conclusions and not allegations of fact.

Mr. CHASE.—We have conceived that the objections are merely frivolous, and I think they are, and I am ready to present them along that line.

The COURT.—This should have been disposed of before the trial.

Mr. JANEWAY.—I don't think they are at all frivolous. We are entitled to know what the claims were.

The COURT.—The objections to the amendment will be overruled.

(WITNESS, continuing.) The schedule of my assets and liabilities which I signed and verified correctly sets forth the various items of indebtedness which I incurred between the 12th of January, 1915, and the 23rd of April, 1915, and the dates when incurred, and those items were all unpaid at the time this schedule was filed on June 2, 1915.

BANNISTER'S SCHEDULE IN BANKRUPTCY.

SCHEDULE A.

Preferred Creditors.

Vera E. Fitzpatrick, Bakersfield,	\$ 150.00
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Creditors Holding Securities.

Security Trust Co. of Bakersfield, note, \$14,- 000.00, dated May 5, 1914, contracted in- dividually, secured by mortgage covering lots 11 to 24, inclusive, block 359, City of Bakersfield, Kern County,	14,000.00
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(Testimony of Alfred W. Bannister.)

National Bank of Bakersfield, note, \$1300.00,
dated December 21, 1914, contracted indi-
vidually, secured by chattel mortgage
dated January 5, 1915, on Stutz automo-
bile, trust deed dated April 8, 1915, cover-
ing 20 acres of real estate, Kern County,
and chattel mortgage dated December 21,
1914, on Wyble warehouse building, \$ 1,300.00

Creditors Whose Claims Are Unsecured.

D. Hanson, Dayton, Nevada, promissory
note dated November, 1913, contracted in-
dividually, 15,800.00

Frederick Ewens, address unknown, prom-
issory note dated December 4, 1908, con-
tracted individually in England, 970.00

Sarah Bannister, address unknown, loan
\$1,000.00, dated January 1, 1909, con-
tracted individually at Bakersfield, 1,000.00

Eliza Bannister, address unknown, prom-
issory note \$727.93, dated February 4, 1908,
promissory note \$970, dated November 23,
1909, contracted individually in England, 1,697.93

Caroline A. Bannister, address unknown,
loan \$1,000.00, dated January 1, 1909, con-
tracted individually at Bakersfield, 1,000.00

A. Diodati, Bakersfield, balance book account
for hay incurred since Dec. 1, 1914, indi-
vidually, at Bakersfield, 193.85

S. C. Smith Estate Co., Bakersfield, balance
on book account for corn, incurred since
January, 1915, individually, at Bakersfield 89.49

(Testimony of Alfred W. Bannister.)

E. B. Root, Wasco, Cal., balance book account for corn, incurred since December, 1914, individually at Bakersfield,	295.61
A. Agnetti, Bakersfield, balance on book account for hay and corn, incurred since January 2, 1915, individually, at Bakersfield,	1,091.26
C. E. Lieb, Bakersfield, balance on book account for hay, incurred since February, 1915, individually at Bakersfield,	312.40
R. H. Best, Bakersfield, balance book account, incurred since January, 1915, individually, at Bakersfield,	86.00
S. N. Sherzer, Bakersfield, loan, dated January 16, 1915, contracted individually, at Bakersfield,	\$ 900.00
Dr. A. S. Shafer, Bakersfield, loan dated January 21, 1915, contracted individually, at Bakersfield,	2,000.00
J. E. Mills, Bakersfield, balance book account for corn, incurred since December, 1914, individually, at Bakersfield,	370.25
W. S. Heck, Bakersfield, balance on book account for hay, incurred since January, 1915, individually, at Bakersfield,	501.45
Ernest Roberts, Bakersfield, balance book account for hay and corn, incurred since December, 1914, individually, at Bakersfield,	279.49

(Testimony of Alfred W. Bannister.)

F. M. Noriega, Bakersfield, balance on book account for hay, incurred since January, 1915, individually, at Bakersfield,	175.00
Pittsburg Steel Co., San Francisco, balance on book account for wire, incurred individually, February, 1915,	112.07
J. F. Pfost, Bakersfield, balance book account for grain, incurred since January, 1915, individually, at Bakersfield,	423.62
Northwestern Mutual Fire Ins. Co., Seattle, insurance on grain, incurred November, 1914, individually, at Bakersfield,	57.00
Henry Hoskings, Bakersfield, balance book account for hay, incurred since November, 1914, individually, at Bakersfield,	70.67
Hollywood National Bank, promissory note, April 5, 1913, contracted individually, at Hollywood,	2,500.00
Tony Silver, Bakersfield, balance on account of hay, incurred since November, 1914, individually, at Bakersfield,	116.18
H. Robinson, Bakersfield, balance on account of hay, incurred since November, 1914, individually, at Bakersfield,	137.00
W. Smith, Bakersfield, balance on account of hay, incurred since January, 1915, individually, at Bakersfield,	323.20
J. H. Hoskings, Bakersfield, balance on account of corn, incurred since February, 1915, individually, at Bakersfield,	\$ 172.60
Studebaker Garage, Bakersfield, for automo-	

(Testimony of Alfred W. Bannister.)

bile supplies, incurred since February, 1915, individually, at Bakersfield,	105.67
C. R. Blodget, Bakersfield, balance on account of insurance, incurred January, 1915, individually, at Bakersfield,	8.35
W. E. Benz, Bakersfield, balance for corn, incurred since January, 1915, individually, at Bakersfield,	55.00
L. A. Hannon, Bakersfield, book account, for insurance, contracted individually, at Bakersfield,	58.90
U. S. Steel Products Co., San Francisco, for bale of ties, incurred February, 1915, individually at Bakersfield,	58.00
Kellogg Oil Co., Los Angeles, oil stock indebtedness, incurred in 1912, individually at Bakersfield,	169.17
Fairbanks-Morse Co., Los Angeles, galvanized iron, incurred February, 1915, individually, at Bakersfield,	54.06
Insurance Bureau, Auto Club of Southern California, Los Angeles, insurance incurred January, 1915, individually, at Bakersfield,	122.35
Total	\$46,756.57

SCHEDULE B.

Real Estate.

Lots 11 to 24, inclusive, block 359, Bakersfield, mortgaged to Security Trust Co. to secure payment of \$14,000.00	\$20,650.00
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(Testimony of Alfred W. Bannister.)

Lot 17 and the west half of lot 16, re-sub, of Semi-tropic tract, Hollywood, home- steaded for \$5,000.00	5,000.00
A portion of the southeast quarter of section 32, township 30 south, range 27 east, M. D. B. and M., Kern County, mortgaged to Security Trust Co. to secure payment of \$14,000.00	3,050.00
Twenty acres in section 35, township 11 north, range 23 west, S. B. M., Kern County, covered by trust deed to National Bank of Bakersfield	\$ 2,000.00
Cash on hand	49.93
Promissory note of M. F. Imhoff, dated January 7, 1914,	300.00
Promissory note of Cornelius Chapman, dated May 15, 1912,	450.00
Stock in trade consisting of grain, hay and mill stuffs in warehouse in Bakersfield and at Bannister switch	800.00
Household furniture and wearing apparel at Hollywood residence	1,500.00
Two horses at Bakersfield,	75.00
One wagon and hay rack at Bakersfield	35.00
One Stutz automobile, mortgaged to National Bank of Bakersfield,	1,000.00
One motorcycle at Bakersfield,	50.00
Warehouse equipment, consisting of trucks, canvas blocks, tackle, etc.	150.00
Office fixtures in Bakersfield warehouse,	

(Testimony of Alfred W. Bannister.)	
consisting of desks, safe, chairs, type-writer, etc.	150.00
Open accounts on account of hay and grain business, Bakersfield,	4,834.76
299 shares of the capital stock L. A. Hay Storage Co., a corporation (the above company now in bankruptcy)	
\$1,000.00 policy Mutual Life Insurance Co. of New York, surrender value	500.00
\$4,000.00 policy, Bankers Life Insurance Co., surrender value,	1,000.00
Claim against L. A. Hay Storage Co. for hay and grain delivered and sold to said company	17,492.08
Deposit National Bank of Bakersfield	70.83
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Total	\$59,157.60
Property Claimed as Exempt.	
Household furnishings, wearing apparel and books,	\$ 1,500.00
Lot 17 and the west half of lot 16, re-sub of Semi-tropic Tract, Hollywood, homesteaded for	5,000.00
\$1,000.00 policy Mutual Life Ins. Co. of New York surrender value	500.00
\$4,000.00 policy Bankers Life Ins. Co., surrender value	1,000.00
Stutz automobile	1,000.00
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	\$ 9,000.00

(Testimony of Alfred W. Bannister.)

Exemption claimed under the laws of the State of California.

SUMMARY OF DEBTS AND ASSETS.

Wages	\$ 150.00
Secured claims	15,300.00
Unsecured claims	32,070.53
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Total Debts	\$47,520.53
Real estate	30,700.00
Cash on hand	49.93
Promissory notes	750.00
Stock in trade	800.00
Household goods	1,500.00
Horses	75.00
Vehicles	1,085.00
Tools	150.00
Other personal property	150.00
Due on open accounts	4,834.76
Insurance policies	1,500.00
Unliquidated claims	17,492.08
Bank deposits	70.83
Exempt property	9,000.00
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Total Assets	\$69,157.60

The foregoing subscribed and sworn to by Bannister
June 2, 1915.

(WITNESS, continuing.) I was in Bakersfield at the time that the property in Los Angeles was attached. My wife wrote me a letter about it. I came down to Los Angeles the next day probably.

(Testimony of Alfred W. Bannister.)

(Stipulated that Bannister's Hollywood home was attached by Wells April 21, 1915. Thereupon a copy of the writ was left with Mrs. Bannister.)

Q. Are you sure you had no talk with Mr. Russell on April 23?

A. I have no recollection of it.

Q. By The COURT.—Did you ever talk with him about that time?

A. Yes; about that time.

Q. What did you say to him? Did you tell him about financial difficulties down here?

A. No. At that time I had not talked to him about financial difficulties, because everything had been straightened out and affairs were going smoothly at that time around this date.

Q. Did you tell him about your house being attached?

A. I probably mentioned it to him, that I had to come to Los Angeles in a hurry.

Q. Do you know whether you spoke to him about it?

A. No; I don't recollect.

Q. You don't remember?

A. I can't remember.

Q. Did you talk to anybody else connected with the bank about that time?

A. No, sir.

By Mr. CHASE.—You were in possession of both these warehouses on April 23rd, were you not?

A. Yes.

Q. And you continued in possession of the ware-

(Testimony of Alfred W. Bannister.)

houses down to the date of the filing of the petition in bankruptcy, did you not?

A. What date was that?

Q. May 5, 1915.

A. Yes.

Q. And you continued to conduct the business of buying and selling hay subsequent to April 23, 1915, did you not?

A. Yes.

Q. And you continued to sell from these warehouses the property covered by these mortgages, did you not?

A. Yes.

(Stipulated that on May 5th, 1915, the petition in bankruptcy was filed in the matter of Alfred W. Bannister, bankrupt, and on May 24th, 1915, he was adjudicated a bankrupt.)

Q. Mr. Bannister, on April 23, 1915, what property did you own?

The COURT.—Hand him the schedule and let him tell from his schedule what property he owned on that date.

Mr. CHASE.—I don't care to ask the valuation that he puts on his property.

The COURT.—I want to know what property he owned. Let him go ahead and state the valuation, Mr. Chase, and then you can show its valuation if you want to. You won't be bound by his valuation.

(WITNESS, continuing.) On April 23, 1915, I owned the following property:

The Bannister warehouse property in Bakersfield, comprising lots 11 to 24, inclusive, block 359, which

(Testimony of Alfred W. Bannister.)

I valued at \$20,650, which was encumbered by a mortgage for \$14,000 in favor of the Security Trust Co.

My Hollywood home, which on April 23, 1915, regardless of the homestead, was probably worth between \$10,000 and \$12,000.

The warehouse at Bannister siding, consisting of practically two acres of land, with a corrugated iron warehouse, which property was also mortgaged to the Security Trust Co. of Bakersfield as security for the same \$14,000 note.

Twenty acres in section 35, township 11 north, range 23 west, on the San Emidio range, covered by trust deed in favor of The National Bank of Bakersfield, as security for \$10,000.

Household furniture and wearing apparel, \$1500.

Stock in trade, consisting of grain, hay and mill stuff in the warehouses at Bannister and Bakersfield.

Two promissory notes for \$300 and \$450 respectively.

Two horses at Bakersfield, \$75.00.

One wagon and hay rack at Bakersfield, \$35.00.

One Stutz automobile, \$1000, mortgaged to defendant bank to secure note for \$1500.

One motorcycle \$50.

Warehouse equipment, consisting of trucks, blocks, tackle, hammers, saws, cleaners, \$150.

Office fixtures and warehouse at Bakersfield, consisting of desks, safe, chairs, typewriter and so forth, \$150.

Open book accounts.

(Testimony of Alfred W. Bannister.)

299 shares of stock in the Los Angeles Hay Storage Co (Company now bankrupt.)

Life insurance.

Claim against Los Angeles Hay Storage Co., \$17,492.

National Bank of Bakersfield, \$70.00.

I had no other assets on April 23, 1915, than those set out in my schedule in bankruptcy, from which I have just been testifying; and my liabilities on that date are scheduled likewise. According to the schedule they aggregated \$46,756.57, and the assets \$59,157.60. I did not include in the schedule the liabilities a note owing on April 23, 1915, upon which I was then a guarantor payable to the Security National Bank of Los Angeles in the sum of \$9,500.00, because that was an indebtedness of the Los Angeles Hay Storage Co. and I had nothing to do with it in my business at Bakersfield; nor did I include a note to William McCullough of \$3413.37, which I owed him on April 23, 1915, on account of stock of the Los Angeles company. Also on that date I owed William C. Wells \$1789.57 on note for the purchase of stock of the Los Angeles Hay Storage Co. I was also at that time guarantor on a note of Los Angeles Hay Storage Co. to a Pasadena bank for from \$1000 to \$1200. Said liabilities last above mentioned also existed on April 8, 1915. I owned on and prior to April 23, 1915, 299 shares of the stock of the Los Angeles Hay Storage Co., of which stock there was outstanding 500 shares, and I had been such stockholder for several years prior to 1915. The \$9500.00 note signed by the Los

(Testimony of Alfred W. Bannister.)

Angeles Hay Storage Co. in favor of the Security National Bank was endorsed on the back in blank by me, my wife and Frank B. Smith and his wife, and was dated September 28, 1914. Only the sum of \$150 has been paid on the principal of this note, and the balance is unpaid. I signed three notes, each dated February 24, 1914, payable to W. A. McCullough, two each in the sum of \$1,000 and one in the sum of \$1150. Nothing has been paid on these notes, principal or interest. The notes bear interest at the rate of seven per cent per annum from Feb. 24, 1914. These notes are not referred to in my schedule of liabilities. The Wells notes were sent to Mr. Wells and have not been paid.

(On

Cross-Examination,

the witness testified as follows:)

Frank V. Smith had the active management of the Los Angeles Hay Storage Co. I did not have any active management of it, and have never figured up what my stockholder's liability in that company was on any particular date. On neither April 8, or April 23, 1915, did I know the aggregate of that company's indebtedness. I first understood sometime in May or the middle of April, 1915, that by reason of holding stock in that company I became obligated for a certain portion of its indebtedness. I don't think I ever informed Mr. Russell or any other official of the defendant bank what my stockholder's liability was by reason of holding stock in that company. It was some time in April or May, probably in April, that I may

(Testimony of Alfred W. Bannister.)

have mentioned to Mr. Russell that I was under obligation to the banks down here for notes that I had endorsed; I understood I was obligated on the endorsements made to the banks; but otherwise I did not know that I was responsible for the general indebtedness of the company or any portion of it until around about May, because I then understood that I was going to be put through involuntary bankruptcy. I did not appear in court at the time I was adjudged a bankrupt. I had employed an attorney prior to that time, who was also the attorney for the Los Angeles Hay Storage Co., and I never knew for certain that he had not appeared for me in the proceedings. I now know that he did not appear for me in the proceedings only from what you say. I did not include in my schedule of liabilities the notes I had endorsed on behalf of the Los Angeles company or the notes given Wells and McCullough, because all of those concerned the affairs of the Los Angeles company, which I thought were taking care of themselves under the bankruptcy law, and I at all times kept my Bakersfield business segregated from the affairs of the Los Angeles Hay Storage Co. I considered the Bakersfield my personal business and knew very little about the management or what was being done in the Los Angeles concern, and I did not, and do not, know what my stockholder's liability in that concern amounted to.

(On additional

Direct Examination,

the witness testified as follows:)

In addition to the assets set forth in my schedule,

(Testimony of Alfred W. Bannister.)

I also owned on April 23, 1915, a good deal of the property covered by the chattel mortgages to the defendant bank, and a great deal of that was sold after April 23rd. The defendant bank took possession of that property and sold it and it was shipped in their name and the money went direct to the bank. I don't know whether I paid the bank any more money aside from what they got from that property. The bank shipped the stuff and billed it out, and in keeping my records correct they notified me when the money was turned in to them, and I gave them checks to cover these returns as they received them and they were entered in the pass book and the checks were given in that way. The defendant bank subsequent to May 4th put the money to my account which they derived from the sales of this property, and then I checked from that account and paid them various checks on account of this mortgage indebtedness. I issued all those checks to the defendant bank. The money represented by those checks which I gave them was already in the bank in the name of the bank as the proceeds of the sales of the various amounts of merchandise covered by those chattel mortgages. They told me when any of the proceeds came in and I gave them checks to cover them. I don't know whether these were all the checks given to the defendant bank.

(The checks in question were all signed by Bannister in favor of the defendant bank on the dates and for the amounts as follows):

(Testimony of Alfred W. Bannister.)

COMPLAINANT'S EXHIBIT No. 10.

May 6, 1915	\$ 500.00
" 10, "	1,500.00
" 11, "	2,500.00
" 14, "	500.00
" 17, "	300.00
" 19, "	1,250.00
" 20, "	700.00
" 22, "	450.00

(WITNESS, continuing.) When I returned from Los Angeles, after going down there in connection with the attachment on my property, I found the bank were in possession down at the warehouse and that they had recorded all the sales of the stuff from the different warehouses. They were practically in possession of all the property.

Q. Now, you were selling goods during the months of January, February and March in the ordinary course of business, I think you testified?

A. Yes.

Q. Did you make to the bank daily statements of the amounts of your sales during those months?

A. No.

Q. How often, if at all, did you notify the bank what you were doing in the way of making sales of the mortgaged property?

A. As merchandise came in and out all the time, I would sell a carload of stuff and sometimes draw a sight draft through the bank, and told them that that

(Testimony of Alfred W. Bannister.)

was on some grain and that the money would be in in a few days, and the checks would be paid.

Q. And that was the way you conducted business during January, February and March, 1915?

A. Yes, sir.

Q. And the bank knew that you were selling this stuff that was mortgaged?

A. I was handling the stuff all the time.

Q. They knew you were doing that in January, February and March, 1915?

A. Yes.

Q. And that you were doing it in the ordinary course of business?

A. Yes.

Q. What was the value of the mortgaged property on April 23, as near as you can get at it, Mr. Bannister, in trying to fix the amount of your assets?

Mr. JANEWAY.—Do you mean the property covered by the chattel mortgages?

Mr. CHASE.—The property covered by the chattel mortgages.

A. I don't know.

Q. Would you think that that property was sold by the bank at its fair market value?

A. Yes, selling it as they did.

Q. Now, they sold after Nov. 4, 1915, as alleged in the answer, \$8800 worth of goods?

A. They sold a large quantity. I don't know the exact amount.

Q. Have you any way of determining how much they did sell?

(Testimony of Alfred W. Bannister.)

A. The books would show it.

Q. Which books?

A. You can see the different sales that were made and the date of the shipments made.

Q. Do your books show the shipments that were made by the bank after May 4, 1915?

A. The shipping receipts would show it.

Q. And did you conduct this business with the bank as you were doing on your own behalf prior to May 4?

A. Practically. I don't know whether there was a merchandise account with The National Bank of Bakersfield.

Q. Subsequent to May 4 did you manage the shipping of hay and grain that was mortgaged?

A. I managed it; yes.

Q. You managed all sales that were made?

A. There were one or two men there that in the ordinary course of business always had done so. If they made a sale in the warehouse they would bring it in to the office.

Q. Mr. Schroeter has handed me the ledger showing the account of The National Bank of Bakersfield from May 6, 1915. Is that a correct statement of moneys paid by you to The National Bank of Bakersfield?

Mr. JANEWAY.—It seems to me the checks would be the best evidence. They were all paid by checks.

The COURT.—I think the book would be receivable in evidence.

(Testimony of Alfred W. Bannister.)

A. The merchandise account opened with The National Bank of Bakersfield showing the different shipments made to different people out of the chattel mortgaged stuff—out of the merchandise there, the people that received the stuff, and here are the checks that were credited when they came back through the bank.

(The ledger account of the defendant bank, as shown in Bannister's ledger, was introduced and received in evidence, and is as follows:)

(Testimony of Alfred W. Bannister.)

1906	NATIONAL BANK OF BAKERSFIELD					MDSE. A/C	
May	6	McNear	107	\$984.75	May	108	\$891.39
"	"	"	"	891.39	May	"	984.75
"	"	"	"	823.18	"	11	876.48
"	"	"	"	933.31	"	"	866.64
"	"	"	"	876.48	"	"	933.31
"	7	East Side	"	83.08	"	17	750.00
"	"	"	"	83.24	"	19	337.30
"	8	R & K	"	80.90	"	"	349.15
"	"	"	"	79.36	"	"	315.00
"	"	"	"	56.17	"	"	310.65
"	"	"	"	57.62	"	"	551.29
"	10	S. O. Co.	"	101.79	"	"	140.39
"	11	K. R. O. F. Calif.	111	132.50	"	21	22.03
"	12	S. O. Co.	"	112.32	"	22	60.70
"	"	"	"	111.15	"	12	31.77
"	"	Assd. S. Co.	"	551.29	"	25	185.42
"	"	Guernsey	"	349.15	June	1	500.00

(Testimony of Alfred W. Bannister.)

The COURT.—Isn't that all that was sold?

Q. By Mr. CHASE.—Is that all that was sold subsequent to April 23?

A. That was grain being received and hay being received and shipped out all the time, and the money was interchanging all the time in checks to the bank.

Q. By The COURT.—Have you any account in the bank?

A. I shipped out something like \$3794 between April 1st and May 1st.

Q. I had not asked you, Mr. Bannister, as to what happened after you say that the bank took possession of this property on April 23.

Q. By Mr. JANEWAY.—Everything that was realized from the sale of the mortgaged property was paid to the bank and received by the bank and credited on these notes?

A. Yes.

Mr. CHASE.—After April 23?

Mr. JANEWAY.—At any time.

A. Yes.

Q. All proceeds of any sales of any part of the mortgaged chattels was received by the bank?

A. Oh, yes.

(WITNESS, continuing.) I don't think on April 23rd, or prior thereto, I filed with the County Recorder of Kern County any statement that I proposed transferring possession of my stock in trade to the defendant bank on or about April 23rd. I don't recollect that on that date I filed any kind of a statement with the County Recorder. The condition of my assets

(Testimony of Alfred W. Bannister.)

and liabilities was practically the same on April 8th as on April 23rd, 1915.

(On resuming

Cross-Examination,

witness testified as follows:)

I made payments to the defendant bank at various times between January and May, 1915. As I sold portions of the property covered by the chattel mortgages in favor of the bank I applied a part of the proceeds of those sales upon my indebtedness to the bank in Bakersfield. In other words, as I sold some portion of the property covered by those chattel mortgages I paid to the bank at least a part of the proceeds of those sales. With the balance I paid current bills. For instance, I handled a great deal of rolled barley, and that comes in and goes out every day a good many tons, and that is not on any record of the chattel mortgage and was not chattel mortgaged. That resulted in my acquiring other merchandise. I would pay a bill for the rolled barley with that money, and I would sell it and turn the money back to the bank, so that ultimately the bank got all the proceeds of the sales less the expenses thereof. Approximately somewhere around the end of April all the stuff was shipped in the name of The National Bank of Bakersfield, and the shipping receipts were issued in the name of the bank and were in my possession at the time the Trustee took possession of my books and papers.

The COURT.—Is it your idea that all this property covered by chattel mortgages was shipped in the name of the bank?

(Testimony of Alfred W. Bannister.)

A. Yes, after they took possession.

Q. What date did they take possession?

A. I have no distinct recollection. It was somewhere about the end of April or May, probably the latter end of April.

Q. Or first of May?

A. Yes.

(WITNESS, continuing.) Those checks that were given by me to the bank after they took possession were not given until the bank notified me that they had received the proceeds of those shipments. The bank got the proceeds direct and notified me that they had the money and asked me to give them a check covering it. It was entered in my deposit book and I immediately gave them checks right in the bank at the time. I did not understand that I could have drawn checks against the proceeds in the hands of the bank from these sales to pay any other person than the bank. In other words, it was simply a matter of keeping my books straight, the giving of these checks was, and I could not have used that money to pay someone else without the consent of the bank unless there was something came in that was sold again and was turned over to make a cash transaction of it. If I did use any of it I would use it to replace merchandise which would be covered to the bank. Referring to the property which I testified to on direct examination as owning on April 23, 1915, it included the Bannister warehouse at Bakersfield, encumbered by a mortgage for \$14,000 to the Security Trust Co., which I consider to have been worth on April 23, 1915, about

(Testimony of Alfred W. Bannister.)

\$20,000. It consisted of about half a block of land running along the Santa Fe railroad tracks for 264 feet and on the south side of it is 14th St. I arrive at this valuation from its locality and from that of the surrounding property. Also my Hollywood home which I valued at between \$10,000 and \$12,000 on that date. I consider that to be its reasonable market value at that time. In the schedule I put in simply the amount of the homestead on it.

By The COURT.—Do both sides agree that this property was stock in trade of a merchant?

Mr. CHASE.—That is what I claim the evidence absolutely demonstrates it.

The COURT.—What do you say about it, Mr. Janeway?

Mr. JANEWAY.—I have not made any contention about it. I don't make any particular point of it. It probably was stock in trade of a merchant.

Also I had the warehouse property at Bannister siding, covered by the mortgage to the Security Trust Co. of Bakersfield. That consisted of two acres of land with the warehouse of the capacity of 600 tons and platform and a \$1500 private track running from the railroad into the warehouse property for loading hay and grain. I consider that to have been of the value of about \$3000 or \$3500 on April 23, 1915. Also the twenty acres covered by the trust deed in favor of the defendant bank, which I consider to have been worth about \$200 on April 23, 1915. Also a corrugated frame warehouse at Wyble siding located on leased ground, which I consider to have been

(Testimony of Alfred W. Bannister.)

of the value of \$400 or \$500 on April 23rd. I also had the merchandise that was mortgaged to the defendant bank, and which I consider to have been worth on April 23rd at least the amount for which it was mortgaged. That was its fair valuation at that time. That was practically all the merchandise I had. I also had household furniture and wearing apparel worth \$1500. Horses worth \$75. Stutz automobile worth \$1000. I do not call the automobile stock in trade. There was a chattel mortgage covering that. Warehouse equipment worth \$150. Office fixtures worth \$150. Open book accounts listed at \$4834.76. Claim against Los Angeles Hay Storage Co. \$17,000 and some odd dollars, which claim I didn't consider of any particular value on April 23rd. My condition on April 8, 1915, was practically the same as it was on April 23, 1915, so far as the assets I had and their valuation. I employed an attorney to represent me when the involuntary petition in bankruptcy was filed. He accepted the employment and was at the same time the attorney for the Los Angeles Hay Storage Co.

(Stipulated that Bannister was adjudged a bankrupt by default.)

In the fore part of April, 1915, I came to Los Angeles in connection with the affairs of the Los Angeles Hay Storage Co. and had a meeting at the bank with Mr. Flory, Mr. Mead and Mr. Zombro, in which the affairs of that company were discussed, and it was arranged between us that the concern was to be handled by certain of these men as trustees, and Mr.

(Testimony of Alfred W. Bannister.)

Flory was to act as manager for them. I considered Flory a competent man to conduct a business of this nature, as he was probably the oldest man in Los Angeles in the hay business. At this meeting he expressed himself as being of the opinion that he could get the business out of its difficulties, providing I would waive payment of my claim for \$17,000 for twelve months, and the other creditors would waive payment of their claims for six months. I was to have nothing to do with the business. I then waived payment of my claim for twelve months and later understood that the other creditors had done the same with respect to their claims for six months. Before this talk Mr. Flory had been around sounding some of the creditors who wanted to press the concern for payment and he had already secured their agreement to this extension. I then returned to Bakersfield with the understanding that the affairs in Los Angeles would be worked out in such manner as to prevent bankruptcy proceedings. I thought if Mr. Flory was to take charge I might probably get a good deal of my claim out of the company, but I would have to wait twelve months for it. When I stated in the letter that I kicked it goodby I meant that I thought I had lost it.

The COURT.—There is one thing that I am not satisfied about yet, Mr. Bannister, and that is when you learned that you had a stockholder's liability in that company. When do you think you first learned that you were liable as a stockholder?

A. I understood my liability was to the banks only down here and that is why I begged them to let me

(Testimony of Alfred W. Bannister.)

try and work out the salvation of the company. I didn't know that I should lose everything I possessed in a stockholder's liability.

The COURT.—Who first told you that you were liable as a stockholder?

A. When I found that they had filed involuntary bankruptcy.

Q. Is that the first you knew about it?

A. That is the first I knew about it.

Q. Who told you about that, your attorney?

A. Probably. I really don't know. I was just talking matters over and I couldn't say who told me in the first place that they would get everything I had.

(WITNESS, continuing.) Prior to April 8th I had not discussed particularly with Mr. Russell the affairs of the Los Angeles company. He knew that I had some interest in the company, but I never told him how much money I had invested in the company down here. I saw him on April 8th, the day the trust deed was given, but do not think that anything was said at that time about the Los Angeles company. I was not in Bakersfield on April 23rd, the day these mortgages were put on record, but in Los Angeles, I think.

Q. When did you first know that they had been put on record?

A. Sometime within that week.

Q. Who told you?

A. Mr. Russell told me, I think.

Q. Was that after you had returned from Los

(Testimony of Alfred W. Bannister.)

Angeles from this last meeting, respecting the affairs of the Los Angeles Hay Storage Company?

A. I think so; yes.

Q. When you first learned about these chattel mortgages being put on record, and the trust deed, they had already been put on record, had they?

A. Yes.

Q. And Mr. Russell was telling you something that he had already done and not what he was going to do?

A. I think so; yes.

(WITNESS, continuing.) I then told him it was satisfactory so far as I was concerned. We had the understanding all the time that he could do it any moment he wished to. When I returned that time and Mr. Russell informed me the mortgages and trust deed had been placed on record I found a representative of the bank in possession and in charge of my warehouse at Bakersfield. Mr. Russell told me that he had done that; I did not say anything in reply. Prior to this conversation with Mr. Russell upon my return from Los Angeles I don't recollect that I had ever discussed with him anything definite about the affairs of the Los Angeles company, nor had I told him what my interest in that company was. I had told him that I had this claim of \$17,000 against that company and was having some trouble in getting it paid, but I had not told him prior to that conversation that I did not expect to get anything from the claim; and prior to that time I didn't know anything about being held for stockholder's liability in that company. When

(Testimony of Alfred W. Bannister.)

Russell told me he had placed somebody in charge of my warehouse and was going to sell the mortgaged merchandise I probably told him to go ahead; I did not protest. After that time every sale made in the warehouse was reported daily to the bank and the proceeds of those sales paid to them direct from the purchasers except the cash purchasers at the warehouse and those proceeds were turned over daily. I was simply there assisting in the sales of property to the best advantage in order to obtain the best prices and the property was shipped in the name of the bank.

The COURT.—(Examining one of the mortgages) “Bale of ties.” What is that?

A. That is wire to bale hay with.

The COURT.—Do you gentlemen claim that that was merchandise in trade or not? Did you have it for sale?

A. Yes; it was for sale.

The COURT.—This property was valued at \$5,399. It seems to me that it was all merchandise. Is that right? I understand that it is a material proposition that it is merchandise and you gentlemen agree that it is merchandise.

(WITNESS, continuing.) When I stated on direct examination that I continued in possession of the Bakersfield warehouse until some time in June I meant being in possession. I was there. I was there personally all the time. The bank had a representative there, a Mrs. Vera Fitzpatrick. She had charge of the office of the warehouse.

Q. And all sales were reported to her?

(Testimony of Alfred W. Bannister.)

A. Yes; they were on record in the books.

By The COURT.—The men in charge and doing the work, were they under your employ or in the employ of the bank?

A. They were paid by check which went to the bank.

Q. Was there a different arrangement made about those men that were working there?

A. No. I think not.

(WITNESS, continuing.) No suit was ever started against me by any of my creditors prior to the filing of the petition in involuntary bankruptcy other than that instituted by Mr. Wells, and I know of no judgment obtained against me prior to that time. At the time the defendant bank received the blanket chattel mortgage of January 12, 1915, (Plaintiff's Exhibit 4), it at that time held other chattel mortgages from me covering the same property as was covered by this blanket chattel mortgage; and those former mortgages had in each instance been given at the respective times that the promissory notes referred to in the blanket mortgage were given. The first transaction I ever had with the National Bank of Bakersfield was on November 2, 1914, when I borrowed \$800 from them. The only official of the bank that I had my dealings with was J. K. Russell, the cashier. I first became acquainted with him several years ago when he was cashier of the Bank of Bakersfield. That bank was merged with the Security Trust Co. and at that time Russell formed the defendant bank, or a little later. I had business transactions with Mr. Russell at the old

(Testimony of Alfred W. Bannister.)

Bank of Bakersfield and secured loans from that bank through him, which loans were secured by my giving chattel mortgages on horses, mules, wagons and warehouse. None of those chattel mortgages were ever recorded. I continued to do business with the Security Trust Co. after the merger for some time until I transferred my account to the defendant bank about November 2, 1914, at Mr. Russell's solicitation. On that occasion I told Mr. Russell that I wanted to buy some oats and corn on storage and could get the storage receipt by paying for the merchandise and wanted to borrow the money from the bank and would turn over the storage receipts to the bank. I secured the loan and brought the storage receipts and turned them over to Mr. Russell at that time. I expected to have similar transactions with him thereafter and we discussed that at that time. On November 11, 1914, I secured a loan of \$2500 from the defendant bank and signed a promissory note and a chattel mortgage securing the same. At that time I told Mr. Russell that I had contracts with different people for corn, hay and grain, or whatever they had in my line of business, and they would want payments to help harvest, and I used that money for that purpose. I told Russell that I wanted this loan for that purpose and would secure him by a chattel mortgage on the stuff when purchased. The money thereby secured I so used in accordance with my conversation. The sixty tons of oats referred to in the mortgage as being located in Bannister's warehouse must have been partially purchased with the \$800 I had previously borrowed from

(Testimony of Alfred W. Bannister.)

the bank—they were worth more than \$800. I used all or some portion of the loan of \$2500 obtained on November 11th in buying corn and hay on the ranches of Weyand, Barnett and Webster, all located in Kern County. Russell did not go out and examine that lot. I used the money that I secured on this loan in purchasing that stuff. It was later moved into one of the warehouses. Some of it might have been shipped out direct. We also discussed the proposition that after this property had been transferred from the different ranches to my warehouse I would give a blanket mortgage covering it, which I afterwards did; (referring to Plaintiff's Exhibit 4) that is the blanket mortgage of January 12, 1915. I cannot tell whether this blanket mortgage covered all this property. So much stuff was being shipped in and out all the time. It was for sale at any time. If any of the stuff was sold it was replaced by other merchandise, and if I did not use the proceeds of the sale of any part of it to buy additional merchandise I paid the proceeds to the bank on the indebtedness evidenced by the different notes.

Q. By Mr. JANEWAY.—Did you at this time have any funds with which you could have purchased this property?

Mr. CHASE.—Objected to as incompetent, irrelevant and immaterial.

The COURT.—Overruled.

Mr. SCHROETER.—What time are you referring to?

Mr. JANEWAY.—November 11, 1914.

(Testimony of Alfred W. Bannister.)

The COURT.—He said he didn't have any means to pay it.

(WITNESS, continuing.) I don't recollect whether I had any conversation with Mr. Russell at the time the mortgage of November 11th was given relative to his recording or not recording it.

(Said chattel mortgage of November 11, 1914, executed by Bannister in favor of the defendant bank, in the same form as Exhibit "A" attached to this statement, and covering sixty ton of oats at Bannister's warehouse, 14th and D Sts., Bakersfield, also all corn on Weyand's ranch and on Barnett's ranch and all hay on Webster's ranch, Kern County, and given as security for Bannister's note of \$2500 in favor of defendant bank, dated November 11, 1914, due sixty days thereafter, which mortgage it never recorded, was at this time introduced and received in evidence as Defendant's Exhibit "A.")

(WITNESS, continuing.) On December 1, 1914, I secured a loan of \$1,000 from the defendant bank and at that time executed a promissory note therefor secured by a chattel mortgage covering 55 tons of Egyptian corn which was then in my warehouse at Bakersfield. I told Mr. Russell that I was making this loan to buy this corn and grain. I had only partly paid for it and used a part of the proceeds of the loan to pay the balance due on it.

Q. Did you use all of the \$1,000 in paying the balance due on this 55 tons of Egyptian corn?

A. I could not tell.

(Testimony of Alfred W. Bannister.)

Q. If you did not use all of it, what did you do with the balance?

A. I might have bought some hay and grain. So many of the deals lapped one over the other.

Q. Was that hay or grain later covered by the chattel mortgages to this bank?

A. Yes, sir.

(WITNESS, continuing:) I can't recollect whether Mr. Russell went down to the warehouse and viewed this particular lot or not. He went down to the warehouse at different times to look things over.

Q. At the time you made this loan 'did you have funds with which you could have paid the balance due on the purchase price of this corn?

A. Only through the sale of the merchandise that was coming in and going out all the time. There was always a bank balance.

Q. Some part of the merchandise you had already mortgaged by this previous mortgage.

A. By turning it over.

(WITNESS, continuing:) I don't think there was any particular conversation at this time about Mr. Russell's recording or not recording the mortgage.

(At this time said mortgage of December 1, 1914, executed by Bannister in favor of defendant bank, in the same form as Exhibit "A" attached to this statement, and covering 55 tons of Egyptian corn at Bannister's warehouse, Bakersfield, and securing Bannister's note for \$1,000, dated December 1, 1914, in favor of defendant bank, and due ninety days after date, which mortgage was never recorded, was introduced

(Testimony of Alfred W. Bannister.)

and received in evidence as Defendant's Exhibit B.)

(WITNESS, continuing.) On December 9th I secured a loan of \$1500 from the defendant bank and at that time executed a promissory note therefor secured by a chattel mortgage covering twenty tons of barley and twenty tons of corn that was in the Bannister warehouse, 14th and D streets, in Bakersfield, at the time, also covering alfalfa hay, barley hay on several different ranches in Kern County, which hay I proposed to buy with the proceeds of this loan and so told Mr. Russell; and I think he went out with me and looked at the Gregg hay. I don't recollect about the balance of it. At that time I did not have funds with which I could have purchased this property. I told Mr. Russell at the time that I was going to use the proceeds of this loan to buy this property on these different ranches, and I so used them.

(Said mortgage of December 9, 1914, executed by Bannister in favor of defendant bank, in the same form as Exhibit "A" attached to this statement and covering 20 tons of barley and 20 tons of corn at Bannister's warehouse, corner 14th and D Sts., Santa Fe yards, Bakersfield, also all alfalfa hay on Gregg's ranch, all barley hay on Garrett's ranch, all barley hay on Machada's ranch, and given as security for his note in favor of the bank in the sum of \$1500, due thirty days after December 9, 1914, which mortgage was never recorded, was introduced and received in evidence as Defendant's Exhibit "C".)

(WITNESS, continuing.) On January 4, 1915, I secured a loan from the defendant bank of \$1500 and

(Testimony of Alfred W. Bannister.)

then executed a promissory note therefor secured by a chattel mortgage of the same date covering certain corn, hay and barley in the Bannister warehouse at Wyble siding, Kern County, which I had only partially paid for. I used the proceeds of this loan to pay the balance of the purchase price, and I could not have paid it except by means of this loan, and the preceding loans. I could not say whether Russell saw the property or not. There was nothing said about the bank recording or not recording the mortgage.

(Said mortgage of January 4, 1915, executed by Bannister in favor of defendant bank, in the same form as Exhibit "A" attached to this statement, and covering 60 tons of corn, 20 tons of alfalfa hay and 50 tons of barley hay, in Bannister's warehouse, Wyble siding, Kern County, and given as security for his note in favor of the bank for the sum of \$1500, due sixty days after January 4, 1915, which mortgage was never recorded, was introduced and received in evidence as Defendant's Exhibit "D".)

(WITNESS, continuing.) On January 5th I secured a loan from the defendant bank of \$1,000 and executed a note therefor secured by chattel mortgage, covering seventy tons of corn in the Bannister warehouse at Bakersfield. I told Mr. Russell at the time that the money was to be used in paying the balance of the purchase price for that corn, and it was so used; and at that time I did not have funds to pay it except by means of this loan.

(Said mortgage of January 5th, executed by Bannister in favor of defendant bank, in the same form as

(Testimony of Alfred W. Bannister.)

Exhibit "A" attached to this statement, and covering 70 tons of Egyptian corn at Bannister's Bakersfield warehouse, given as security for his note in favor of the bank for the sum of \$1,000, due thirty days after January 5, 1915, which mortgage was never recorded, was introduced and received in evidence as Defendant's Exhibit "E".)

(WITNESS, continuing.) At the same time that this last loan of \$1,000 was secured I executed and delivered to Mr. Russell a chattel mortgage in favor of the defendant bank covering my Stutz automobile, which mortgage was given as additional security for this loan of \$1,000 and the previous loan of \$1500 made the preceding day.

(Said mortgage of January 5, 1915, executed by Bannister in favor of defendant bank, in the same form as Exhibit "A" attached to this statement, and covering one four-passenger convertible 6 Stutz 1913 model, series 4-B, car No. 106, register No. 27987, located at Bannister's warehouse, 14th and D Sts., Bakersfield, and given as security for his note in favor of the bank, dated January 4, 1915, for the principal sum of \$1500, due sixty days after date, and also as security for his note in favor of the bank, dated January 5, 1915, for the principal sum of \$1,000, due thirty days after date, which mortgage was recorded April 23, 1915, in Kern County, was introduced and received in evidence as Defendant's Exhibit F.)

(WITNESS, continuing.) On April 8, 1915, I executed and delivered to Mr. Russell the trust deed of that date covering the twenty acres on the San Emidio

(Testimony of Alfred W. Bannister.)

Range. It was given as security for my indebtedness to the bank aggregating \$10,000, which had been incurred previously.

(Said trust deed was thereupon introduced and received in evidence as Defendant's Exhibit G, being trust deed in the usual form, executed by Bannister April 8, 1915, to J. K. Russell and F. J. Galtes, as trustees, for the benefit of the defendant bank as beneficiary, and given as security for the sum of \$10,000, evidenced by promissory notes executed by Bannister to the defendant bank, and covering real property in Kern County described as the south half of the southeast quarter of the southeast quarter of section 35, township 11 north, range 23 west, S. B. & M., and recorded in Kern County April 23, 1915.)

(WITNESS, continuing.) I don't recollect that anything was said at the time this last chattel mortgage was given or at the time the trust deed was given between Mr. Russell and myself about the recording of those instruments. I couldn't recall the exact dates. It was not after they had all been given, but at different times I told Mr. Russell that he could record the mortgages at any time he wished to. I cannot fix any particular date or occasion for such conversation.

Q. Now, you state, Mr. Bannister, during this period of time from November, 1914, until the fore part of May, 1915, that you were constantly buying and selling merchandise?

A. Yes, sir.

Q. Did you during all that period keep in your warehouse at Bakersfield an equal amount of grain or

(Testimony of Alfred W. Bannister.)

hay to that covered by this blanket mortgage of January 12?

A. Yes.

~~Mr. CHASE.~~—I move to strike out the answer as immaterial.

The COURT.—I am going to ask another question. Do you mean to say when you shipped out a carload of hay you got another carload in?

A. I had more stock in and out of the warehouse all the time.

Q. And you kept it stocked up equal to what was under that mortgage all the time?

A. There were very little shipments of hay out of the warehouse. It was gotten more out of the sidings. It was more relative to corn, and that was always left practically intact all the time, and it was all shipped out when the season got more advanced.

Q. From the time of this mortgage, April 23, on down, it was all shipped out after that mortgage was made—after that mortgage of January 12, was recorded—

Mr. JANEWAY.—It was recorded on April 23.

The COURT.—And it was given January 12. Now, from January 12 to the 23rd of April how much of this property that was under mortgage was there on the 23rd of April?

A. All of it, the whole bulk.

Q. By Mr. CHASE.—The particular property?

A. The whole bulk of the property.

Q. Had you shipped any between January 12 and

(Testimony of Alfred W. Bannister.)

April 23 from the property that was under the mortgage?

A. I may have done so.

Q. You don't know?

A. Not at present.

Q. Now, it was all shipped after April 23?

A. I think so.

Q. Now, you say when you got back up there after April 23 you found some lady in your office?

A. Yes.

Q. What was her name?

A. Vera Fitzpatrick.

Q. Was anything said to you as to what she was doing there?

A. She was put there by Mr. Russell.

Q. Who told you that?

A. Mr. Russell told me.

Q. What was your arrangement then between you and Mr. Russell concerning the property?

A. That I was to ship the stuff out and she was to make records of it and turn it into the bank daily.

Q. What time did she get there in the morning?

Mr. JANEWAY.—Does Your Honor refer to the first morning or each morning?

The COURT.—Each morning.

Mr. JANEWAY.—He was not there the first morning. He was in Los Angeles.

Q. By The COURT.—After you got there what time did she get there in the morning?

A. About 8 o'clock or 9.

Q. Was the office open when she got there?

(Testimony of Alfred W. Bannister.)

A. Yes.

Q. What time did she leave there in the evening?

A. At different times; 5 or 6 o'clock.

Q. Was the office open after she left?

A. Sometimes.

Q. How many other people were about there?

A. Three or four men.

Q. Do you know how many?

A. Not for certain.

Q. How long had those men been there?

A. One man worked for me eight or ten years teaming and so on.

Q. He was a warehouse man who continued to work there?

A. Yes.

Q. Who paid her wages?

A. The bank.

Q. Do you know whether she was paid?

A. No.

Q. And you paid the wages of the men?

A. Yes.

Q. How big a room is that office?

A. 12 by 14, I should think.

Q. How many desks in there?

A. Four. They were built in desks—two of them.

Q. Part of the building?

A. Yes.

Q. Did she occupy a desk?

A. Yes, that and the typewriting desk.

Q. Did she run a typewriter?

A. Yes.

(Testimony of Alfred W. Bannister.)

Q. Do typewriting for you?

A. Yes.

Q. Was she a stenographer also—take shorthand?

A. Yes.

Q. Wrote letters for you?

A. Yes. Originally she was in charge of the Kern Valley Bank affairs—the bank that closed—and she had charge of all of it, and she did my work on the side, and she came from her office down to my office at one time.

Q. Before that?

A. Before that.

Q. She had done some work for you in your office?

A. Oh, yes.

Q. Did she take inventory of the property that was on storage there?

A. I don't believe so.

Q. When the property was shipped out did she keep an account of it?

A. Yes.

Q. Where are the books that she kept? Was it in your books or her books?

A. She took the records from my books.

Q. You think she took the records from your books?

A. Yes, sir, for the business of the day.

Q. And reported it to the bank?

A. Yes.

Q. Were there any signs on the building?

A. No. You mean advertising signs?

Q. Yes. Bannister's Warehouse?

A. No.

(Testimony of Alfred W. Bannister.)

Q. Nothing of that kind on the building?

A. Not at that time.

Q. Had there been previous to that time?

A. Yes; I had a big fire there with the 1200-ton warehouse that I had there, and that burned my sign.

Q. After you built this warehouse there was no sign on the building?

A. This was the old warehouse with the brick wall. It was a grain warehouse. And the rest of the property burned away.

Q. How long was that before January, 1915?

A. That fire occurred, I think, in 1912 or '13.

The COURT.—Go ahead with the examination.

Q. By Mr. JANEWAY.—Was this lady in your employ at the time the bank put her there in charge?

A. She did all my stenographic work and type-writing.

Q. Did you pay her by the month?

A. I paid her by the month.

Q. Was she being paid by you immediately preceding the time the bank put her in charge?

A. Yes.

Q. How much did you pay her?

A. I paid her \$50 a month.

Q. Was she in the office there?

A. No; she had her own office up town. The Kern Valley Bank's affairs were conducted from their own office uptown, and I used to take a lot of letters up there and she did a lot of my work.

Q. And you did work up there in her office?

(Testimony of Alfred W. Bannister.)

A. Yes. And when it was convenient she would come down and help me with the books also.

Q. She did not stay in the office continually all the time till the bank put her in charge?

A. No.

Q. And nothing went out of that warehouse after she was put in charge but what she made an account of?

A. No.

Q. And she reported those accounts daily to the bank?

A. Yes, sir.

Q. And any cash sales were deposited daily with the bank?

A. Yes.

Q. Would you say that on April 23d there was as much merchandise in that warehouse as there was covered by this blanket mortgage of January 12?

A. Blanket mortgage of January 12?

The COURT.—He testified that there was; that he kept that stock up.

A. Oh, yes.

The COURT.—There was as much property in there on April 23d as there was there when you made that mortgage?

A. Yes.

The COURT.—That is what I understood in answer to my question.

Q. By Mr. JANEWAY.—And if you made any sales between those dates you restored the property to

(Testimony of Alfred W. Bannister.)

the warehouse by purchasing other property and placing it there—property of the same character?

A. Yes, sir.

Q. And the proceeds of any of those sales less the expenses of your business was paid to the bank on account of these various notes?

A. Yes.

Q. And the proceeds of all shipments that went out of that warehouse after April 23d were paid direct to the bank, were they not?

A. Yes.

Q. And you did not pay Mrs. Fitzpatrick for what she did in there as a representative of the bank?

A. No.

Q. By The COURT.—Did you continue to pay her for writing your letters?

A. Yes; at her office?

Q. No, no. After she came down there and was in your office did you pay her for writing your letters?

A. I think her salary went along just the same.

Q. Fifty dollars a month?

A. Fifty dollars a month.

Q. Have you anything here to show those payments, any checks?

A. No; she has a preferred claim for three months' salary.

(WITNESS, continuing.) I don't think that on April 23, 1915, I knew or had taken occasion to figure up the aggregate of my indebtedness on that date.

Q. Am I correct in understanding your testimony to be that any amounts paid by you between the 5th

(Testimony of Alfred W. Bannister.)

day of February, 1915, and the 4th day of May, were the proceeds of some part of this property that was covered by the chattel mortgages in favor of the defendant bank?

A. Yes; the proceeds of corn and hay and grain and so on, that I shipped out, and money borrowed from the bank. All of it was covered previous to the sale by some of these mortgages in favor of the bank. I had no other source of income during that period.

(On

Redirect Examination

the witness testified as follows:)

These mortgages to the defendant bank covered nearly all my stock in trade.

Q. After April 24th and down to the time that the trustee in bankruptcy took charge of your business up there you sold some of your stock and bought other stock and paid out money and received money during that time, didn't you?

A. I don't think I bought very much during that time.

Q. Well, you conducted your business in the regular way all the time?

A. Yes.

Mr. JANEWAY.—I object to his question as to conducting it in the regular way.

The COURT.—It calls for a conclusion.

(WITNESS, continuing.) They took possession of it by having somebody in charge down there. Mrs. Fitzpatrick was in charge. Mrs. Fitzpatrick received

(Testimony of Alfred W. Bannister.)

the same salary from me subsequent to April 24th that she had received prior to that time and did the same work for me.

(Bannister's deposit book in the defendant bank was then presented to him.) My deposits in the defendant bank from April 22nd, 1915, are all substantially correct. They came from the sale of stock from my warehouse.

(Said deposit book was introduced and received in evidence as Plaintiff's Exhibit 12, which shows the following deposits between April 23, and June 18, 1915:

April 26	\$170.00
April 26	450.83
April 27	81.25
April 29	167.35
May 1	30.00
May 4	140.70
May 5	696.00
May 6	95.62
May 6	609.00
May 7	93.84
May 7	156.40
May 8	96.40
May 10	891.39
May 10	984.75
May 11	876.48
May 11	866.64
May 11	933.31
May 11	181.03
May 14	484.15

(Testimony of Alfred W. Bannister.)

May 15	19.10
May 17	750.00
May 17	240.10
May 18	\$ 50.00
May 19	337.30
May 19	349.15
May 19	315.00
May 19	310.65
May 20	112.50
May 20	551.29
May 20	140.39
May 21	18.75
May 22	492.21
May 26	92.51
May 27	185.42
June 1	613.63
June 1	500.00
June 3	42.00
June 7	68.21
June 8	28.24
June 10	53.15
June 16	29.23
June 18	37.75

(The witness was then shown a blotter book showing the cash sales made from day to day of stock in the warehouse at 14th and D streets, and stated that the items were correct.)

Q. The sales here that were made were made out of your stock in trade, were they not, from April 23d on down to June 23d?

(Testimony of Alfred W. Bannister.)

A. That was purchases made of rolled barley and screenings and so on.

Q. I mean included in these sales there was property that was included in this mortgage, was there not?

A. I think the most of those sales of rolled barley and stuff was not included in the mortgage at all. They were just minor sales made from the warehouse.

Q. Let us take April 23d. We have some wheat hay, alfalfa, rolled barley and some Indian corn.

A. That is April 23?

Q. Yes. Now, we have on the same day some wheat hay, rolled barley, oats and oat hay.

A. Very small items. A bale of hay or a sack of barley.

Q. Take it on April 24, alfalfa, rolled barley, red ear corn, wheat bran, corn, alfalfa, oat hay and so forth.

A. Yes.

Q. Take it on April 26. Alfalfa.

A. Fifty cents.

Q. Oat hay.

A. A dollar.

The COURT.—Do you want to put those entries in evidence?

Mr. SCHROETER.—I want to show the witness' testimony that he sold not one particular item, but that he sold from this stock that was covered by these purported mortgages small lots in the regular course of trade.

Q. By The COURT.—Did you, Mr. Bannister?

(Testimony of Alfred W. Bannister.)

A. Some of those items to people that came down to the warehouse and wanted a bale of hay or something like that.

Q. Which was mortgaged?

A. Yes; the rolled barley and other stuff came from the mill and is not in the mortgage.

Q. If any man came to get baled hay or Indian corn or Egyptian corn, whatever it was, you sold it, whether it was in the mortgage or not?

A. Yes.

(The book containing the duplicate shipping receipts issued by the Santa Fe R. R. for shipments during 1915 from Bannister's warehouses was then introduced and received in evidence as Plaintiff's Exhibit 13, and it contained shipping receipts issued in the names, on the dates and for the amounts as follows, to wit:

(Testimony of Alfred W. Bannister.)

Date	Consignor	Goods Shipped	Amount
1915			
Feb. 23	A. W. Bannister	c. l. oat hay	24660 lb.
" 23	" "	198 bales alfalfa	22000 "
" 23	" "	272 " "	31420 "
" 23	" "	195 " "	"
" 24	" "	230 sacks Egypt corn	30090 "
" 25	" "	180 bales barley hay	22500 "
" 25	" "	180 " "	22500 "
" 26	" "	4 sacks seed barley	400 "
" 27	" "	196 bales alfalfa	"
Mar. 1	" "	196 " "	"
" 2	" "	53 " "	"
" 1	" "	196 " "	21580 "
" 3	" "	9 " "	"
" 4	" "	8 " grain hay	2000 "
" 5	" "	10 bds. bale ties	333 "
" 5	" "	11 sacks seed oats	1000 "
" 8	" "	3 " alfalfa seed	150 "
" 8	" "	2 " seed corn	200 "
" 8	" "	1 " sorghum seed	100 "

(Testimony of Alfred W. Bannister.)

Date	Consignor	Goods Shipped	Amount
1915			
Mar. 9	A. W. Bannister per N.	30 sacks Feterita seed	3900 lb.
" 10	" " per P. T. Neate	309 " Egypt. corn	40250 "
" 12	" " per N.	1 sack alfalfa seed	50 "
" 13	R. S. Ashe	170 bales alfalfa	28000 "
" 13	" " "	170 " "	27600 "
" 15	A. W. Bannister per N.	137 " oat hay	
" 15	" " "	187 " alfalfa	
" 17	" " per N.	200 " oat hay	26130 "
" 19	" " "	192 " alfalfa	
" 22	" " "	189 " "	
" 22	" " "	242 sacks Egypt corn	30070 "
" 22	" " "	1 " "	85 "
" 24	" " "	157 bales barley hay	20940 "
" 23	" " "	232 sacks Egypt. corn	30105 "
" 25	" " per N.	5 bales alfalfa	685 "
" 26	" " "	153 " wheat hay	17390 "
"	" " "	37 " alfalfa	4080 "
"	" " "		<hr/>
"	" " "		21470 "

(Testimony of Alfred W. Bannister.)

"	26	"	"	per N.	150	"	wheat hay	17390
"		"	"		37	"	alfalfa	4080
"	25	"	"		162	"	barley hay	21470
"	26	"	"		162	"	"	20130
"	25	"	"		163	"	"	20910
"	29	"	"		157	"	"	20640
"	29	"	"		117	"	oat	19880
"	29	"	"	per N.	236	sacks	Egypt. corn	19500
"	29	"	"	"	2	"	"	30120
"	29	"	"	"	15	bcls. bale ties		230
"	30	"	"		27	bales barley hay		500
"		"	"		108	" oat		3900
"		"	"		45	" alfalfa		13560
"		"	"					5240
"	30	"	"		200	" alfalfa		22705
"		"	"					23080

(Testimony of Alfred W. Bannister.)

Date	Consignor	Goods Shipped	Amount
1915			
Mar. 30	A. W. Bannister per N.	175 bales alfalfa	19330 lb.
" 30	" " "	186 " "	21605 "
" 31	" " "	159 " "	19260 "
" 31	" " "	192 " "	24240 "
" 31	" " "	200 " "	23140 "
Apr. 1	" " per N.	174 sacks corn (red)	
" 1	" " per P. T. N.	77 " " (white)	
" 2	" " " N.	224 " cracked corn	24640 "
" 2	" " " "	43 " Egyptian "	5480 "
" 3	" " " "	c. l. alfalfa	21720 "
" 5	" " " "	c. l. "	22680 "
" 7	A. E. Spring per N.	15 bds. bale ties	500 "
" 8	A. W. Bannister per N.	160 bales oat hay	20100 "
" 9	" " " "	48 sacks sorghum seed	4735 "
" 10	R. S. Emery	15 bds. bale ties	500 "
" 12	A. W. Bannister per N.	200 bales alfalfa	22680 "
" 13	" " " "	179 " wheat hay	20700 "
" 13	" " " "	6 sacks oats	500 "
" 13	" " " "	303 " Milo maize	39985 "
" 13	" " " "	12 bds. bale ties	400 "
" 13	" " " "	324 sacks Milo maize	40535 "

(Testimony of Alfred W. Bannister.)

"	14	"	"	220	bales alfalfa	'	26400	"
"	15	"	"	36	"	'	4260	"
"	16	National Bank of Bakersfield,		2	sacks Egypt. corn	'	255	"
"	19	per A. W. Bannister	"	256	"	'	32095	"
"	20	A. W. Bannister	"	13	" seed rice	'	1400	"
"	20	"	"	25	bales oat hay	'	3240	"
"	20	"	"	2	sacks cracked corn	'	160	"
"	21	"	"	242	" Feterita	'		"
"	22	National Bank of Bakersfield,		224	"	'	27745	"
		per N.		18	" Egyptian corn	'	23104	"

(Testimony of Alfred W. Bannister.)

Date	Consignor	Goods Shipped	Amount
1915			
Mar. 30	A. W. Bannister per N.	175 bales alfalfa	19330 lb.
" 30	" "	186 " "	21605 "
" 31	" "	159 " "	19260 "
" 31	" "	192 " "	24240 "
" 31	" "	200 " "	23140 "
Apr. 1	" per N.	174 sacks corn (red)	
" 1	" per P. T. N.	77 " " (white)	
" 2	" " N.	224 " cracked corn	24640 "
" 2	" " "	43 " Egyptian "	5480 "
" 3	" " "	c. l. alfalfa	21720 "
" 5	" " "	c. l. "	22680 "
" 7	A. E. Spring per N.	15 bds. bale ties	500 "
" 8	A. W. Bannister per N.	160 bales oat hay	20100 "
" 9	" " "	48 sacks sorghum seed	4735 "
" 10	R. S. Emery	15 bds. bale ties	500 "
" 12	A. W. Bannister per N.	200 bales alfalfa	22680 "
" 13	" " "	179 " wheat hay	20700 "
" 13	" " "	6 sacks oats	500 "
" 13	" " "	303 " Milo maize	39985 "
" 13	" " "	12 bds. bale ties	400 "
" 13	" " "	324 sacks Milo maize	40535 "

(Testimony of Alfred W. Bannister.)

"	14	"	"	"	"	220	bales alfalfa	"	"	36400
"	15	"	"	"	"	36	"	"	"	4260
"	16	National Bank of Bakersfield, per A. W. Bannister	"	"	"	2	sacks Egypt. corn	"	"	255
"	19	A. W. Bannister	"	"	"	256	"	"	"	32095
"	20	"	"	"	"	13	seed rice	"	"	1400
"	20	"	"	"	"	25	bales oat hay	"	"	3240
"	21	"	"	"	"	2	sacks cracked corn	"	"	160
"	22	National Bank of Bakersfield, per N.	"	"	"	242	" Feterita	"	"	27745
						224	"	"	"	23104
						18	" Egyptian corn	"	"	

(Testimony of Alfred W. Bannister.)

Date	Consignor	Goods Shipped	Amount
1915			
Apr. 22	A. W. Bannister per N.	26 sacks rolled barley	2000 lb.
"	"	6 " shorts	540 "
"	"	9 " corn meal	1060 "
" 24	"	1 " alfalfa seed	110 "
" 24	W. V. Bowers per P. T. N.	219 " white Milo maize	26615 "
" 24	W. V. Bowers per P. T. N.	363 " red "	42620 "
" 27	A. W. Bannister per N.	30 " Feterita seed	3780 "
" 27	"	10 " "	1375 "
May	"	6 bales alfalfa	690 "
" 3	"	26 sacks rolled barley	2000 "
" 4	"	5 " "	385 "
" 4	"	195 bales alfalfa hay	24100 "

(Testimony of Alfred W. Bannister.)

Date	Consignor	Goods Shipped	Amount
1915			
May 5	A. W. Bannister per B	228 sacks Egyptian corn	30025 lb.
" 6	National Bank of Bakersfield	(75 sacks Feterita	9200 "
		(15 " Egyptian corn (Special)	1845 "
		(360 " Egyptian corn	42700 "
" 6	National Bank of Bakersfield	501 " "	61070 "
" "	"	484 " "	55280 "
" "	"	460 " "	57880 "
" "	"	468 " "	54355 "
7	"	162 bales alfalfa hay	20770 "
" "	"	163 " "	20810 "
" 8	"	172 " "	23050 "
" 8	"	178 " "	22470 "
" 8	"	169 " "	19340 "
" "	"	178 " "	20225 "
" 10	"	" (bulk heads down; could not be lifted)	
" "	"	161 bales alfalfa hay (bulk heads down; could not be lifted)	
" "	"	bales alfalfa hay	
" 11	"	267 " barley	33575 "

(Testimony of Alfred W. Bannister.)

"	12	"	192	"	oat	"	24960	"
"	12	"	190	"	alfalfa	"	24700	"
"	"	"	188	"	barley	"	23075	"
"	"	"	180	"	grain	"	22370	"
"	"	"	180	"	barley	"	23410	"
"	"	"	182	"	alfalfa	"	150	"
"	"	A. W. Bannister per N.	2	sacks	seed grain			
"	12	National Bank of Bakersfield	180	bales	alfalfa			
"	13	"		c. l.	bulk corn on cob		33730	"
"	13	"		c. l.	bulk corn on cob		34915	"

(Testimony of Alfred W. Bannister.)

Date	Consignor	Goods Shipped	Amount
1915			
May 14	National Bank of Bakersfield	c. l. ear corn (bulk)	31500 lb.
" 14	"	" " "	31065 "
" 15	"	" " "	17865 "
" "	"	" " "	4435 "
" "	"	" " "	8650 "
" "	"	145 sacks Egyptian corn	
" "	"	(40 " Feterita	
" "	"	(79 " shelled corn	
" "	"	144 bales oat hay	
" "	"	190 " grain "	
" 17	A. W. Bannister per N.	(1 sack wheat	
" 18	"	(1 " corn	150 "
" 18	"	8 " Milo maize seed	132 "
" 19	"	1 " wheat	1000 "
" 19	National Bank of Bakersfield	Feterita seed	135 "
" 20	"	174 bales oat hay	2570 "
" 22	"	168 " hay	22620 "
" "	"	16 " wheat hay	
" "	A. W. Bannister per N.	1 " blankets	1995 "
" 24	Tarr & McComb, Inc. per P. J. N.	135 " oat hay	
" 26	Tarr & McComb, Inc. per B.	182 " wheat hay	
" "	Tarr & McComb, Inc. per B.	193 " " "	

(Testimony of Alfred W. Bannister.)

Date	Consignor	Goods	Shipped	Amount
"	A. W. Bannister per P. J. N.	2	" Feterita seed	205 "
" 27	S. Segari per P. J. N.		c. l. corn	
" 28	Tarr & McComb, Inc. per B.	222	bales wheat hay	
" 29	Tarr & McComb, Inc. per B.	200	" oat "	
" 29	Perry Taylor per B.	168	" " "	
" 31	Tarr & McComb, Inc. per B.	192	" wheat "	
June 1	Tarr & McComb, Inc. per N.	166	" oat "	
June 2	Tarr & McComb, Inc. per B.	103	bales wheat hay	
" 3	Tarr & McComb, Inc. per B.	165	" oat "	
" "	Tarr & McComb, Inc. per B.	(105	" " "	
" 4	Tarr & McComb, Inc. per N.	(41	" wheat "	
" 7	Tarr & McComb, Inc. per N.	160	" oat "	
" 9	Tarr & McComb, Inc. per N.	142	" wheat "	
" 11	A. W. Bannister per B.	(117	" " "	
" 14	" " L. C.	(42	" oat "	
" 14	A. " B.	5	sacks corn	600 lb.
		2	" rice	150 "
		19	" C. R. corn	2125 "

(Testimony of Alfred W. Bannister.)

(WITNESS, continuing.) The mortgages were recorded at the request of the defendant bank and they paid for it and charged it to my account.

Q. By Mr. SCHROETER.—Now, on all these occasions that you made payments on these notes, either prior to or after April 23rd, you gave the National Bank of Bakersfield your check.

A. Yes.

Q. You used considerable of these loans in the regular course of your business outside of the purchase of these lots of hay and grain?

A. No.

Q. It was deposited, was it not, to your credit on the bank's books.

A. Yes.

Q. You checked against it in payment of your bills and business, didn't you?

A. Yes.

The COURT.—In this statement (referring to Bannister's examination before the Referee) you say "I talked to Mr. Zombro down here and Mr. Newby, and I told them that I could get through and meet all my obligations in Bakersfield if I was left alone." Do you remember telling them that?

A. Yes.

Q. "And I told them at the National Bank of Bakersfield that I could, but they forced me into involuntary bankruptcy, and there was no help for it at all." When did you tell the National Bank of Bakersfield that you could get through if left alone?

A. That was sometime in April.

(Testimony of Alfred W. Bannister.)

Q. What time in April?

A. I couldn't recall that.

Q. By Mr. SCHROETER.—You can't fix the exact date of any of these conversations that you had with the National Bank of Bakersfield, in which you informed them of your troubles with the Los Angeles Hay Storage Company down here?

A. Not absolutely. Sometime in April.

Q. Was it the fore part or the latter part of April?

A. Probably the latter part.

Q. It was before the bank took charge of the stock, was it not? It was before the bank filed its chattel mortgages on April 23rd?

A. I don't know.

(On

Recross-Examination,

the witness testified as follows:)

Whenever it was I had this conversation with Mr Russell I told him that things were going along satisfactorily at Los Angeles. At the time I secured these various loans from the defendant bank I could have gone to other banks of Bakersfield and have secured similar loans by giving similar chattel mortgages. The checks drawn against my account in the defendant bank during the period of time in question were in payment of bills incurred in the purchase and sale of this mortgaged merchandise and bills incident to the running of the business, and the proceeds of those various small cash sales subsequent to April 24th were turned over to the bank and applied on my in-

(Testimony of Alfred W. Bannister.)

debtedness. I don't think it was my understanding that I could have drawn checks against these deposits to my account subsequent to April 24th to pay creditors other than the defendant bank. The shipping book will show for itself the amount of tonnage of the different articles shipped from the 24th of April to the day of the first shipment in the name of the defendant bank.

(On

Redirect Examination,

the witness testified as follows:)

Q. As a matter of fact, you did pay out of all of these deposits made at any time after April 23d—you did pay out for bills incurred in the regular course of your business, did you not?

A. Yes, in the regular course of business.

Q. Then it is not true that you thought you were to hold these deposits that you had in the bank for the National Bank of Bakersfield?

A. The National Bank of Bakersfield had the deposits in the first place.

Q. They had the deposits in your name?

A. No; they deposited the checks themselves. The returns came to the National Bank of Bakersfield and they were put into the National Bank of Bakersfield. I did not have the handling of that cash at all.

Q. But they were credited on your pass book, were they not?

A. That is for my record.

Q. They were credited on your deposit book to your account?

A. Yes.

(Testimony of Alfred W. Bannister.)

Q. And you paid out of that account to different persons at various times down to June 24, amounts of money from that account, did you not?

A. Yes.

(The witness was then shown certain checks which he identified as having been signed by him. These checks were introduced and received in evidence as Plaintiff's Exhibits 14, 15 and 16, and are the same checks about which Mr. Russell, the Cashier of the defendant bank, was thereafter interrogated. See page 46 of this statement.)

The date of checks enumerated in Exhibits 14, 15 and 16, together with the name of the payee, the amount of the check and the purpose for which it was paid as indicated by check, are as follows:

(Testimony of Alfred W. Bannister.)

EXHIBIT 14.

Date	Payee	Amount	Account
May 25, 1915	Memo. check) Amt. deducted by F. Gurnsey on coll.	\$ 71.55	
Apr. 30	(Memo. check) Interest on notes to 4-30-1915	66.67	
"	Taylor Milling Co.	40.12	Refund F. Corn
"	B. C. Unruh	50.00	Hay
"	J. H. Jones	10.00	Baling
Date	Payee	Amount	Account
Apr. 29, 1915	J. E. Mills	\$100.00	Corn
"	W. B. Babst	152.10	Feterita
May 4	National Bank of Bakersfield	500.00	Bills payable
"	Ardizzi-Olcese Co.	100.00	Acct. F. M. Noriega
"	W. S. Heck	100.00	Hay
"	G. P. McNear Co.	18.19	Corn
"	A. Diodati	125.00	Alfalfa
"	National Bank of Bakersfield	500.00	Bills payable
"	N. Robinson	50.00	Hay
"	Santa Fe Ry Co.	124.70	Freight
"	B. C. Unruh	131.40	To bal. alfalfa
"	I. C. Henderson	44.00	Personal
"	Mrs. Alfred W. Bannister	50.00	"

(Testimony of Alfred W. Bannister.)

"	8	J. G. Bailey	4.00	Labor
"	8	C. Clarke	15.50	"
"	8	L. Coghill	18.00	"
"	10	Ardizzi-Olcse	100.00	Acct. F. M. Noriega
"	10	"	150.00	A. Diodati
"	12	N. Roberts	100.00	Hay and corn
"	10	U. S. Steel Products Co.	34.80	Wire
"	11	C. E. Lieb	100.00	Hay
May	12	Union Lumber Co.	100.00	Lumber
"	12	Pacific Tel. & Tel. Co.	58.58	Telephone
"	13	Standard Oil Co.	9.50	Gasoline
"	12	Cashier's check for Mrs. Alfred W. Bannister	200.00	.....
"	12	San Joaquin Light & Power	4.85	Light and gas
"	13	W. A. Plummer Mfg. Co.	64.08	Twine—
"	13	Kern Valley Electric Works	35.00	Wiring
Payee			Amount	Account
May	13, 1915	R. Robinson	\$100.00	Hay
"	14	Wiley Smith	200.00	Hay
"	15	W. S. Heck	44.48	Corn
"	15	G. D. Hassell	8.75	Labor
"	15	C. O'Keefe	6.75	"
"	15	E. Lynch	5.50	"

(Testimony of Alfred W. Bannister.)

"	15	"	L. Coghill	18.00	"
"	15	"	P. T. Neate	18.00	"
"	17	"	Henry Hosking	50.00	Hay
"	18	"	Echo Publ. Co.	4.00	Advertising
"	18	"	Studebaker Garage	100.00	Exp. Stutz
"	19	"	C. Eberle	41.86	Alfalfa
"	19	"	Root & Stewart	100.00	Corn
"	19	"	W. S. Heck	100.00	Hay
"	20	"	Western Union Tel. Co.	3.65	Expense
"	22	"	Ardizzi-Olcese	50.00	Hay
"	22	"	P. Del Carlos	27.37	To balance
"	27	"	C. E. Lieb	50.00	Hay

EXHIBIT 15

Date	Payee	Amount	Account
Mar. 27, 1915	L. Coghill	\$ 18.00	Labor
" 27	R. E. Dorn	15.00	"
" 27	J. W. Thompson	50.00	Baling
" 29	M. Kinoshita	19.40	E. Corn
" 20	Kern Co. Land Co.	250.00	Kern River Mills
" 30	I. T. Bennett	133.60	Corn
" 29	Mrs. Alfred W. Bannister	50.00	.....
" 30	J. H. Jones	25.00	Baling
" 30	National Fire Ins. Co.	12.33	Insurance

(Testimony of Alfred W. Bannister.)

Date	Payee	Amount	Account
Mar. 31, 1915	Sperry Flour Co.	\$ 16.50	Mdse.
" 31	U. S. Steel Products Co.	116.00	"
" 31	Charles Praschil	56.90	Alfalfa
" 31	Charles Praschil	56.00	"
Apr. 7	Santa Fe Ry. Co.	539.70	Freight
" 6	J. H. Jones	35.00	Baling
" 5	C. E. Lieb	100.00	Oat hay
" 5	Jose Gani	200.00	Corn
" 7	Union Lumber Co.	16.27	F. cars
" 7	Union Lumber Co.	23.60	Walters & Smith
" 7	F. F. Boese	25.00	Thompson—baling
" 7	D. D. Webster	75.00	J. W. W.
" 7	Kern Furniture Stores	12.50	Mulligan Club
" 7	Pete Elrich	75.00	Corn
" 7	F. M. Noriega	234.19	Alfalfa hay
" 7	Joaquin Sanchez	25.00	Baling
" 7	H. Robinson	50.00	Hav
" 9	J. W. Campbell	140.59	Barley
" 9	Pete Elrich	319.58	Corn
" 9	Tony Silver	20.00	Hav
" 9	Bakersfield Club	54.75	To balance
" 10	R. H. Best	83.20	"
" 10	C. Fberle	50.00	Alfalfa hay

(Testimony of Alfred W. Bannister.)

Date	Payee	Amount	Account
" 10	A. Diodati	50.00	" "
" 10	D. Hanson	50.00	Interest
" 13	J. H. Jones	50.00	Baling
" 14	Redlick's	3.50	Personal
" 15	Ardizzi-Olcese	112.15	To balance
" 15	Ardizzi-Olcese	188.60	Jose Gani
" 15	Ardizzi-Olcese	500.00	To balance
" 15	Mrs. Bannister	50.00	F. M. Noriega
" 15			.....
Apr. 16, 1915	Fred Rolling	\$200.00	Alfalfa hay
" 16	Morenz & Destafino	168.98	To balance
" 17	J. W. Webster	113.94	" "
" 17	F. F. Boese	22.50	Baling
" 17	J. H. Jones	485.00	" "
" 17	Southern Pacific Co.	91.62	.....
" 17	P. T. Neate	18.00	Labor
" 17	C. Clarke	7.50	" "
" 17	L. Coghill	18.00	" "
" 18	U. S. Steel Products Co.	116.00	Wire
" 19	Security Trust Co.	9.10	.....
" 19	J. W. Boese	184.05	To balance
" 19	M. Plastier	81.70	Barley hay

(Testimony of Alfred W. Bannister.)

"	20	Henry Hosking	100.00	Hay
"	20	Kern County	250.00	Mdse.
"	22	E. Roberts	600.00	Corn
"	22	First National Bank	200.00	J. F. Pfast
"	22	M. A. Dulkan	71.55	Oats—grain
"	23	C. E. Lieb	100.00	Hay
"	23	W. S. Heck	10.00	.....
"	23	C. Clarke	12.50	Labor
Mar.	31	(Memo. check) Interest on notes	66.67	

		EXHIBIT 16	
Date	Payee	Amount	Account
Mar. 15, 1915	C. J. Russell on sec. ret'd.	\$ 36.00	
Feb. 27	Interest on notes (Memo.)	66.67	
" 24	Mrs. Alfred W. Bannister	50.00	
" 26	Southern Pacific Co.	52.40	Freight
" 25	F. P. Edmunson	95.28	Mdse

(Testimony of Alfred W. Bannister.)

Date	Payee	Amount	Account
Feb. 27, 1915	Pacific Tel. & Tel. Co.	\$ 25.64	Expense
" "	Frank White	100.00	Baling
" 27	C. W. White	30.40	To balance
" 27	J. H. Jones	100.00	Baling
" 27	L. Coghill	15.00	Labor
" 27	P. T. Neate	15.00	"
" 27	Sam Toovey	12.50	"
" 27	F. Personnell	15.00	"
" 27	C. F. McIntyre	14.50	"
" 27	R. E. Dorn	12.50	"
" 27	German American Sav. Bank	100.00	D. Hansen
Mar. 8	Santa Fe Ry. Co.	168.25	Freight
" 3	Santa Fe Ry. Co.	48.00	Hay sold for demurrage
" 9	F. Roberts	200.00	Hay and corn
" 9	J. E. Mills	500.00	Corn
" 10	Frank White	100.00	Baling
" 10	Maruz & Destofini	200.00	Merchandise
" 10	C. Anson	150.00	Alfalfa
" 10	Henry Hosking	50.00	Hay
" 10	Arizzi-Olcese	200.00	Corn (Jose Gani)
" 10	Pioneer Mercantile Co.	14.55	Expense
" 10	J. Hitchcock	8.15	To balance

(Testimony of Alfred W. Bannister.)

Date	Payee	Amount	Account
" 11	P. Del Carlos	100.00	Alfalfa seed
" 11	Vera Fitzpatrick	50.00	Salary
" 12	J. W. Webster	50.00	Hay
" 13	M. L. Gregg	62.20	.....
" 13	Kate Stubblefield	98.15	White—baling
" 13	National Bank of Bakersfield	500.00	Bledsoe & Kastl
" 13	C. Eberle	100.00	Hay
" 13	Stewart Printing Co.	25.00	Expense
Date	Payee	Amount	Account
Mar. 13, 1915	Wells Fargo	\$ 21.52	.....
" 13	J. Saulsberg	43.60	C. Anson
" 13	J. H. Jones	175.00	Baling
" 13	P. T. Neate	18.00	Labor
" 13	R. E. Dorn	15.00	"
" 13	R. E. Best	75.00	Hay
" 13	L. Coghill	18.00	Labor
" 16	F. O. Stanciliff	100.00	Baling
" 16	Mrs. Alfred W. Bannister	50.00	.....
" 16	C. Anson	68.40	To balance
" 17	Security Trust Co.	93.34	.....
" 17	Kern County Land Co.	250.00	Mdse.
" 18	M. Kinostite	139.15	Corn
" 18	Clarence White	47.75	Mdse.

(Testimony of Alfred W. Bannister.)

"	18	H. I. Stewart	50.00	Corn
"	20	E. O. Stancliff	84.15	Baling
"	20	J. M. Stevens	20.00	J. H. Jones (Baling)
"	20	Vera Fitzpatrick	40.00	.....
"	20	Ernest Roberts	250.00	Corn
"	20	R. E. Dorn	15.00	Labor
"	20	P. T. Neate	18.00	"
"	20	National Bank of Bakersfield	300.00	Acct. Bledsoe & Kastl
"	20	L. Coghill	18.00	Labor
"	22	Joaquin Sanchez	65.00	J. H. Jones
"	19	Southern Pacific Co.	50.16	Freight
"	22	Frank Roellig	150.00	J. H. Jones (Baling)
"	13	National Bank of Bakersfield	298.56	To bal. acct. Bledsoe & Kastl
"	23	James O'Neill	8.43	Barley hay
"	24	Charles Strombeck	20.50	J. H. Jones (Baling)
Date		Pavee	Amount	Account
Mar.	25, 1915	G. W. Craig	\$238.00	Alfalfa hay
"	27	Ed. Sorrenson	25.00	J. H. Jones (Baling)
"	27	Pacific Tel. & Tel. Co.	21.77	Expense

(Testimony of Alfred W. Bannister.)

(Plaintiff then offered a certified copy of the claim of Fairbanks, Morse & Co., covering a claim for goods shipped out to Bannister at Bakersfield during January, 1915, amounting to \$54.06, certified by the referee in bankruptcy.)

Mr. JANEWAY.—Objected to as immaterial and not within any issue presented here.

The COURT.—The witness testified to that account here this morning.

Mr. JANEWAY.—We are not denying that.

Testimony of W. C. Wells, for Plaintiff.

W. C. WELLS, sworn as a witness on behalf of plaintiff, testified as follows:

I live in Los Angeles and know Alfred W. Bannister. He executed and delivered to me the three notes dated February 25, 1914, in the sums of \$500, \$500 and \$550 respectively, as payment for the sale of stock in the D. P. Flory Co. At the time Mr. Bannister gave me these notes I did not know that he had given any chattel mortgages to anyone on any of his stock in trade at Bakersfield, nor that he was giving any chattel mortgage to anybody and he did not advise me of that fact. Some time in April, 1915, I started suit against him on these notes and attached his Hollywood home.

(On

Cross-Examination,

the witness testified as follows:)

I never obtained any judgment in that case. I had no knowledge of any of these chattel mortgages prior to the date of their recordation. I never asked Mr. Bannister if he had given any mortgages on his property.

Testimony of Minnie C. Myer, for Plaintiff.

MINNIE MYER, sworn as a witness on behalf of plaintiff, testified as follows:

In January, 1915, I was employed as assistant credit manager of Fairbanks-Morse & Co., and during the absence of the head credit manager had charge of the credits of that company. I know Alfred W. Bannister. During January, 1915, he sought and received credit of that company. On January 18th and 26th, respectively. The total amount was \$55. At the time the credit was extended I had no knowledge of any chattel mortgages of any kind existing against his property. It was my duty to know the condition of people who received credit. That was my particular business in the company. The credit department only knew about that condition. It was all brought to the attention of that department, any chattel mortgages at all or anything of that kind. No credit would be extended by the company except on the O. K. of that department.

(On

Cross-Examination,

the witness testified:)

I never asked Mr. Bannister whether he had executed and delivered chattel mortgages on any of his property or trust deed or mortgages on any of his real property.

Testimony of James E. Price, for Plaintiff

JAMES E. PRICE, sworn as a witness on behalf of plaintiff, testified as follows:

I am, and for about fifteen years, have been, an adjuster in insolvency, and in connection with my duties as such have handled stocks of merchandise, made inventories, sold and appraised real estate. During that time I have appraised real estate in Bakersfield and in Los Angeles and in the vicinity of those cities, and my duties have been such as to acquaint me with the values of real estate at those places. I know what the market value of the Bannister warehouse and the ten lots upon which it is situated in Bakersfield was on April 23d, 1915. The reasonable market value of it was \$10,000. I also know the reasonable market value of the two acres of land, including the warehouse, at what is known as Bannister siding, that property being described in the schedule filed herein as being the third item of the real estate scheduled. At that time its reasonable value was about \$200.00. The reasonable market value of Bannister's home place in Hollywood, being lot 17 and the west half of lot 16 of the re-subdivision of the Semi-Tropic Tract, Hollywood, Cal., on that date was about \$8,400. The value of the twenty acres on the San Enidio range, known as the south half of the southeast quarter of the southeast quarter of section 35, township 11 north, range 23, west, S. B. M., Kern County, on that date was about \$400. The valuations were the same on April 8, 1915. I examined the Stutz automobile, and in my opinion it was reasonably worth \$600 on April

(Testimony of James E. Price.)

23, 1915. It sold for about \$555. On April 8th and April 23rd, 1915, the two lots conveyed by Bannister to Mr. Hanson in my opinion were worth \$1000 together, said lots being lots 69 and 70 in block 1658, Los Angeles County.

(On

Cross-Examination,

the witness testified as follows:)

I had been working around Bakersfield six or seven years prior to the making of this appraisalment, and have made a great many appraisalments there. The same is true as to my knowledge of real estate values in Los Angeles.

Testimony of J. K. Russell, for Plaintiff.

J. K. RUSSELL, sworn as a witness on behalf of plaintiff, testified as follows:

I am cashier of defendant bank, and prepared all the chattel mortgages in question here. After they were delivered to me by Mr. Bannister they were kept in the vault with the other bank mortgages. The assistant cashier and myself were the only people who had access to them. They were kept there until recorded, April 23, 1915, and those that were not recorded I continued to keep there in the vault. I don't recollect of notifying any of Bannister's creditors that ~~from November, 1914, to the latter part of April, 1915, I knew the market value of hay and grain in and around Bakersfield. At the time of the consolidation of the old bank with the Security Trust Company Bannister continued doing business with the Security~~

(Testimony of J. K. Russell.)

~~Trust Co. for a time. When we first opened up in the defendant bank I solicited his business because he was considered a mighty good client of the old Bank of Bakersfield. We thought he was one of the best customers we had, both for honesty and integrity. I finally secured him as a customer for the defendant bank in November, 1914, when we first made him a loan we held chattel mortgages on any of that stock. Mr. Claflin was the president of the bank on April 23, 1915, and prior thereto. He is an attorney at law with offices above the bank in the building. He did not have any active charge of the bank during the time he was president. I informed him I had these chattel mortgages, and that the same had never been placed of record, but he never instructed me to place them of record.~~

(At this point plaintiff rested and defendant's motion thereupon made to dismiss the Bill of Complaint in each of the cases on the ground that plaintiff had not proven the issues required to be proven by him and had not sustained the burden of those issues was denied by the Court without expressing any opinion.)

Testimony of J. K. Russell, for Defendant.

J. K. RUSSELL, recalled on behalf of defendant, testified as follows:

I have been cashier of the defendant bank since August, 1913. I organized it, and prior to that time I had been associated with what was known as the Bank of Bakersfield until its consolidation with the Security Trust Company of Bakersfield. I first came to Bakers-

(Testimony of J. K. Russell.)

field in January, 1911, and met Mr. Bannister then. He was one of the customers of the bank, and I was introduced to him the first day I went in the bank, where I was assistant cashier and later cashier. From that time until the date of the consolidation I had business transactions with him on behalf of the bank. He secured some loans from the bank through me during that period. They were secured by chattel mortgages upon warehouse receipts upon hay and grain and corn and sometimes mules. I never recorded any of those mortgages. Bannister had been doing business with that bank prior to the time I became associated with it and had secured loans from the bank secured by chattel mortgages prior to that time, and they had confidence

from November, 1914, to the latter part of April, 1915, I knew the market value of hay and grain in and around Bakersfield. At the time of the consolidation of the old bank with the Security Trust Company Bannister continued doing business with the Security Trust Co. for a time. When we first opened up in the defendant bank I solicited his business because he was considered a mighty good client of the old Bank of Bakersfield. We thought he was one of the best customers we had, both for honesty and integrity. I finally secured him as a customer for the defendant bank in November, 1914, when we first made him a loan

(Testimony of J. K. Russell.)

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~~the defendant bank I solicited his business because he~~
~~was considered a mighty good client of the old Bank~~
~~of Bakersfield. We thought he was one of the best~~
~~customers we had, both for honesty and integrity. I~~
~~finally secured him as a customer for the defendant~~
~~bank in November, 1914, when we first made him a loan~~
we held chattel mortgages on any of that stock. Mr.
Clafin was the president of the bank on April 23, 1915,
and prior thereto. He is an attorney at law with
offices above the bank in the building. He did not
have any active charge of the bank during the time
he was president. I informed him I had these chattel
mortgages, and that the same had never been placed

(Testimony of J. K. Russell.)

field in January, 1911, and met Mr. Bannister then. He was one of the customers of the bank, and I was introduced to him the first day I went in the bank, where I was assistant cashier and later cashier. From that time until the date of the consolidation I had business transactions with him on behalf of the bank. He secured some loans from the bank through me during that period. They were secured by chattel mortgages upon warehouse receipts upon hay and grain and corn and sometimes mules. I never recorded any of those mortgages. Bannister had been doing business with that bank prior to the time I became associated with it and had secured loans from the bank secured by chattel mortgages prior to that time, and they had confidence in him. I had had some connection with the grain business previous to coming to Bakersfield. In San Francisco I was connected with wholesale commission merchants and also the Stockton Milling Co. for seven or eight years and was quite familiar during that time with the price of hay and grain, and after coming to Bakersfield kept in very close touch with the market price of those articles. During the transactions I had with Mr. Bannister on behalf of the defendant bank of \$800 on November 2nd. At that time he came to me and said he wanted to do business like we used to do in the old Bank of Bakersfield, and said I am willing to give you part of my business, if not all of it. I told him it was perfectly agreeable to carry it on the same as we carried it on in the other bank. I recall the incident when we made him the first loan of \$800. He said he had some grain in the warehouse

← Insert

(Testimony of J. K. Russell.)

on storage and that the parties needed the money and he would like to buy it, and if I would advance the money he would turn over the warehouse receipts for it, and I accepted it on those conditions. He did turn over the warehouse receipts. They were later turned back to him, I think when he sold the stuff and paid the note. The next loan was made November 11th.

A. He told me any time I wanted to I could record the mortgages.

Q. By Mr. JANEWAY.—When was that he told you that?

A. After the mortgages were made.

Q. By The COURT.—After the mortgages were made every time?

A. At the beginning, when he first began business with us. It was to be done the same as in the old Bank of Bakersfield. And at this time when we got the first mortgage it was stated at that time. I can't recall that he said it every time a mortgage was made, but he did speak of it later, that any time I wanted to I could record them.

(WITNESS, continuing.) At the time I made the loan of \$2500 on November 11th I went down and looked at the sixty tons of oats in the warehouse. I did not go out with him to look at any other property referred to in that chattel mortgage, for I knew where the stuff was and had seen all of it. Before taking mortgages on the different property I used to go down and view it and make similar trips out in the country to the ranches, not only with him, but without him. Some of the property that was mortgaged that

(Testimony of J. K. Russell.)

I didn't go to see I knew about, for I had traveled quite a bit over it. I was familiar during all that time with the market value of those articles and aimed to loan him on the different articles not over seventy-five per cent of their market value at that time. At the time the original mortgages were made Bannister said he would give me a blanket mortgage on it after he had gotten it into the warehouse. One particular reason was to get it covered by insurance so that we would know how much we had instead of scattering it all around. Later he did give me that mortgage, and that is the blanket mortgage of January 12, 1915. On January 5th there were two chattel mortgages taken, one on the Stutz automobile and one on seventy tons of corn. Both of them were received at the time that I made him the loan of \$1,000 on that day. The trust deed of April 8th was executed and received by me on the day of its date. At that time Mr. Bannister said I could take a trust deed or a mortgage on the land and that he might want to use a little more money, so I took a trust deed. I did not ask him for further security. That was all that was said. I made out the trust deed and he signed it. He had acquired the property a short time before that. The chattel mortgages that are unrecorded are included in the blanket mortgage. I did not deem it necessary to record any of them as they were made. I did not record these others that I had the blanket mortgage on when I recorded the big one. The blanket mortgage covered the same property as the others that were unrecorded. When I took that blanket mortgage on the 12th of

(Testimony of J. K. Russell.)

January I went down to the warehouse and checked up the goods that were covered by it and found them all there. On April 23rd I also recorded the trust deed and the mortgage on the Stutz automobile along with the chattel mortgages. I also recorded the chattel mortgage of January 12th on 200 tons of grain and hay at Wyble siding on April 23, 1915, the same day as ~~the~~ so-called blanket mortgage, because it was not included in the so-called blanket mortgage. It was extra grain and hay. For the same reason I recorded at the same time the mortgage on the corrugated iron and frame warehouse at Wyble siding. At the time I received the blanket mortgage I did not deliver up to Bannister the original mortgages, but retained all the mortgages continuously subsequent to their receipt by me. I kept in touch during this period of time with the checks run against his account in the bank to see whether he did use the funds to purchase hay and grain from the different parties that he told me he would. Other than what I have already testified to there were no conversations between Bannister and myself respecting the recording or not recording of these mortgages or the trust deed. During all this period I knew the condition of Bannister's business at Bakersfield and had looked at his books. On April 8th, 1915, I knew he was well fixed up there. On that date he had the Bannister warehouse in Bakersfield and I am familiar with its valuation. I came to Bakersfield in 1911, and am familiar with the sales and purchases of property and have observed the transactions that have been made and have tried to keep in

(Testimony of J. K. Russell.)

touch with the value of property there, and have investigated the value of this property. I place its valuation on April 8, 1915, at \$20,000. At that time I knew that the Security Trust Co. had a mortgage of \$14,000 against it. The custom among banks in Bakersfield is to loan on real estate about sixty per cent of its value. On that date he had two acres of land at Bannister siding worth about \$2,000. Besides the land there was the warehouse and switch track, and for that private switch track he paid \$1,500. I include that in the value I placed on the lot. He had a warehouse at Wyble siding on leased ground, a corrugated structure which I would say was worth \$1,000. He had his home in Hollywood, which he told me he valued at about \$12,000. I had never seen it myself. He had the twenty acres on the San Emidio ranch covered by the trust deed, which I considered worth \$200. He had a Stutz automobile which I considered worth about \$1,000. And he had this hay and grain covered by the mortgages to the bank, which I considered worth about \$15,000 on the date mentioned. All my valuations are as of April 8th. All the liabilities that I knew he had at that time were what he had in Bakersfield, which included the \$14,000 to the Security Trust Co., the \$10,000 to defendant bank and what he owed different farmers for hay and grain purchased, which accounts would not exceed in the aggregate \$4,000. I also knew of Bannister's indebtedness to my bank. I knew of no other indebtedness of his. On April 23rd, when I recorded the chattel mortgages, the condition of Bannister's assets and liabilities remained about

(Testimony of J. K. Russell.)

the same. Prior to April 8th I knew that he was interested in Los Angeles Hay & Storage Co., but didn't know how much. He had never told me the extent of his interest in the company. He had discussed with me the fact that they owed him some money and his books showed it to be about \$17,000. I knew nothing about that concern at all. I asked him why he didn't get the money from them on his claim and he said he expected to realize money on it. That was some time in February or March, 1915. Later I had a conversation with him about it the first part of April, when he came back from Los Angeles, and he said he had made arrangements whereby this Los Angeles concern would be taken care of and he expected to realize the money on his claim. He said nothing else about the Los Angeles concern, and I did not ask him anything else about it and I had no other conversation with him about it until along in the latter part of April, the 25th or 26th, I think, after the mortgages had been placed on record by me. The situation as I have heretofore detailed it with respect to Bannister's assets and liabilities on April 8th and April 23rd was all that I knew about his business on those dates. I knew that he was making sales from time to time during that period from November until the latter part of April out of his merchandise. He always spoke to me about it. On April 8th he came to me and offered the trust deed and said he might want more money to purchase hay and grain. I put these mortgages on record April 23rd. On the afternoon of April 23rd after the bank closed I was going up the street and met two or three

(Testimony of J. K. Russell.)

people who said "I understand Bannister is in trouble in Los Angeles, financial trouble." I asked what source they got the information from and they said from Mr. Long, a hay and grain merchant who was a competitor of Bannister. I didn't know what the trouble was or anything about it, but inasmuch as they had spoken to me about it I went back to the bank and took the mortgages out and took them down and recorded them. I told my assistant cashier that I was going to record them and that by recording them if something should happen I could take possession and protect my money by doing that. At that time I understood that the rumor had been started by this man Long, whom I knew to be a competitor of Bannister's, but I did not know the extent of Bannister's interest in the Los Angeles concern, and did not know what effect, if any, the failure of the Los Angeles concern would have upon Bannister's credit at Bakersfield. I heard nothing in this conversation to which I have referred which indicated what effect that trouble in Los Angeles would have on him in Bakersfield. I have given the entire substance of what I heard at that time. I did not consult with Bannister before putting the mortgages on record. I don't know whether it was the next day or the day after that I saw him. The mortgages and trust deed were put on record at the same time. I saw Bannister when he returned from Los Angeles, and he said they had attached his home down there, and I told him that I had heard he was in difficulty down there and that I had recorded all the mortgages, and he said "All right. It belongs to you.

(Testimony of J. K. Russell.)

That was the agreement." I asked him what the trouble was and how he was getting in so bad. He said they were trying to put him into insolvency and that he was not insolvent and that he was not going into insolvency. That is about all that was said as to any financial end of it. In addition to recording the mortgages on the 23rd I made arrangements with Mrs. Fitzpatrick to come to the Bannister warehouse at Bakersfield the next morning and look out for all the stuff that went out of there. I told her to keep a clear record of everything that came in and went out. To the best of my knowledge she did. She reported daily to me, and I paid her for doing that work, and have a receipt from her for it at the bank. She did not daily turn over to me the cash received from the office. They would have to have a certain amount of cash there to keep the business going. She came down to the warehouse on the morning of the 24th. Bannister was not in Bakersfield at the time. When he returned I told him I had placed her in charge down there. He assisted thereafter in the sale of the property at the warehouse. After April 24th the other help at the warehouse were paid out of the receipts and the balance of the money was turned over to the bank and went into his account. After April 24th no checks were drawn by Bannister against that account that I did not know of. ~~They were submitted to, and approved by, me before they were paid from the account.~~ He would tell me that he was going to pay a certain amount with check, and I would ask him what for, and he would tell me, and whenever they were pre-

(Testimony of J. K. Russell.)

sented at the bank my teller would bring them in to me and ask if they should be paid. I credited the receipts to his account after April 24th, as he was straightening out his account with us and it was a matter of book-keeping. I didn't know that it would make any difference. A short time before the 24th I had gone over and checked up the stuff covered by the mortgages and on that date I took a casual look around and saw that it was about the same. Mrs. Fitzpatrick did not make any inventory of the property at that time. She walked around with me while I was looking over the different things there. I told the man there to report the sales to her. The greatest portion of the property was sold after April 24th in carload lots shipped in the name of the defendant bank.

(Stipulated that an order has been entered in the bankruptcy proceedings that the proceeds of the sale of the Stutz automobile are being held subject to the determination of this suit.)

Q. What amount is yet due the defendant bank after applying the payments from the proceeds?

A. About \$488. As the money was turned in to the bank it was credited to the Bannister account. His indebtedness to the bank was about \$10,500.

(WITNESS, continuing.) The proceeds of these sales after April 24th were applied on his indebtedness to the bank. There is about \$488 yet due after applying those payments. From February 10th to and in-

(Testimony of J. K. Russell.)

cluding June 24, 1915, his payments aggregated \$10,681.13, and the items are as follows:

February 10	\$ 200.00
February 16	250.00
February 19	150.00
February 24	200.00
February 25	500.00
May 4	500.00
May 5	500.00
May 6	500.00
May 10	1500.00
May 11	500.00
May 11	1000.00
May 11	1000.00
May 14	500.00
May 17	300.00
May 19	1200.00
May 19	50.00
May 20	700.00
May 22	250.00
May 22	200.00
June 1	500.00
June 24	181.13

All of those payments were made from the proceeds of the sale of the property covered by some one or other of these chattel mortgages that I have referred to.

(On

Cross-Examination

the witness testified as follows:)

I know all those payments were proceeds of sale of

(Testimony of J. K. Russell.)

some part of the chattel mortgaged goods because the checks were sent to the defendant bank.

Mr. JANEWAY.—Before we proceed with the cross-examination of Mr. Russell, I have assumed that the stipulation that was entered into at the beginning of the case that all adverse rulings were deemed excepted to, would apply to Your Honor's ruling on the motion to dismiss that I made at the end of plaintiff's case.

The COURT.—Oh, yes; but whether it did or not, you may have an exception to it.

(WITNESS, continuing.) I have been engaged in the banking business in Bakersfield for five years. The defendant bank has a capital of \$100,000. At the present time we have in the neighborhood of eleven hundred customers. I have loaned money to many of them on their notes and have taken chattel mortgages as security, some of which I have recorded and some I have not. We have a regular form of chattel mortgage which I used in making up the mortgages. I thought these chattel mortgages would be valid and enforceable liens on Bannister's property, and did not know that the failure to record them would result in other creditors of Bannister not having notice. I was doing business with Mr. Bannister, and I don't recollect any notification being given to any one of the fact that the bank claimed a lien upon any of his property. I sometimes visited his warehouse two or three times a week, and on several occasions examined his books between the 1st of January and the 23rd of April, 1915, and so far as his hay and grain business in Bakersfield is concerned, I was always in close touch with his busi-

(Testimony of J. K. Russell.)

ness. I knew that Bannister was buying and obtaining credit from other persons in Bakersfield in buying and selling grain. I did not advise any of them of the fact that the bank claimed a lien on his property. I took the precaution to have the affidavit on the reverse of the mortgage executed to the effect that the mortgage was made in good faith and not with the intent to defraud any creditor or creditors of the mortgagor, because it is the regular form that was drawn up by our lawyer and used entirely in our business. I understand that whenever I take a mortgage I am not trying to defraud anybody by taking it, and I understand from the party that is making it to me that he is not defrauding anybody. I didn't think it necessary to give notice to other creditors of Bannister of the fact that we claimed this lien because his business with those people has always been conducted in an honest and straightforward way ever since I have known him in Bakersfield. The farmers and the community at large think of him as an honest and upright man and I don't think he had any idea of defrauding any creditor nor do I believe that he ever intended to. Upon Bannister's return from Los Angeles about April 24th when I advised him I had taken possession of his stock at the warehouse he did not protest against my action but was perfectly satisfied with it; he said it was the bank's property and we had a right to do it.

Q. He did not express any concern to you whatever as to these other creditors?

A. You mean the Bakersfield creditors?

Q. Anywhere.

(Testimony of J. K. Russell.)

A. He spoke of some of the people around Bakersfield that he owed a little money to that he bought the hay and grain from.

Q. Did he tell you how he expected to be able to pay them or take care of them?

A. I don't believe he did at that time.

(WITNESS, continuing.) When he advised me that he was having financial difficulties with the Los Angeles concern I did not protest or remonstrate with him because he had not advised me sooner. There was no particular reason why I should favor him by refraining from recording the chattel mortgages over the chattel mortgage of any other patron of the bank. It was my custom in taking securities from patrons of the bank to record the chattel mortgages or not just as I saw fit. It never occurred to me that possibly their other creditors might have no notice whatever of the fact that the bank claimed a lien upon their property. I testified that in my opinion on April 23rd Bannister's Stutz automobile was worth \$1,000.

Q. I show you this letter, and ask you if you stated to Mr. Price at Bakersfield on or about August 12th that in your opinion the value of that automobile was \$375?

A. I made a statement—

Q. Did you, or did you not?

A. I don't remember.

(WITNESS, continuing.) On August 12th I sent a mechanic to the garage to examine the machine, but in making my bid for it at the sale of it I did not think it necessary to bid what I thought it was worth.

(Testimony of J. K. Russell.)

I used my own judgment as to whether or not I should record chattel mortgages given me as security by customers of the bank. I didn't think it was necessary to record the chattel mortgages that some people offered me because I thought they were valid without being recorded. I don't remember of Mr. Claffin, the attorney for the bank, ever advising me whether or not it was necessary to record them. I had authority to make loans on such security as I thought would warrant the loan. I testified that the value of the property covered by the chattel mortgages to the defendant bank on April 23rd was approximately \$15,000. I don't recall the exact figures at which we sold it, but the price of some of that grain went down about the time we were selling it. I believe there was something like \$8800 that was applied to his account. There was some more money above this that was credited to his account and went so far as the general business to pay off some of his creditors at Bakersfield, which, as I stated yesterday, I looked at the checks before it was paid out. We did not sell it at public auction, but we sold it in the regular course of trade. I don't remember the date of the last sale, but think most of the stuff was sold by the 20th of May, as we began to sell it right away. None of the checks against the account were paid subsequent to April 24th without my approval.

Q. Will you state to the Court some of the checks that you approved there?

A. The checks to the farmers around Bakersfield.

There was Gully, Deodetti, and quite a number of

(Testimony of J. K. Russell.)

farmers that I cannot recall the names of off hand. I could probably identify some of the checks. That check to Neate for \$18.00, May 15, 1915, was for labor. He was working for Bannister. To L. Coghil, the same date, was for labor. To H. Robinson on May 13th, \$100, was for hay. To W. A. Plummer Mfg. Co., on May 13th, \$64.08, was for twine. To Standard Oil Co., on May 13, 1915, \$9.50, was for gasoline for Bannister's machine. Memorandum check to Bannister for \$200, May 12th; I approved that. I suppose he had to live. To C. E. Lieb for \$100, May 11th, for hay; probably for a balance due on the hay covering what we had a mortgage on. The amount received from the sale of the mortgaged hay and grain, aggregating \$8881.13, I consider the reasonable value of this property when sold, for I got the best price I could for it. When I stated that I sold the mortgaged property I meant the property remaining in Bannister's warehouse, consisting of the balance of the property covered by the original mortgage after sales had been made therefrom, plus property placed therein by Bannister in lieu of property that he had sold. I base my valuation of \$20,000 upon the Bannister warehouse property upon a former valuation appraised by the old Bank of Bakersfield. I didn't take into consideration the fact that the Security Trust Company loaned \$14,000 on it.

(On

Redirect Examination

the witness testified as follows:)

That property had increased in value, if anything,

(Testimony of J. K. Russell.)

since the old appraisement made by the Bank of Bakersfield. The figures of \$8881.13, being proceeds of the sale of the mortgaged hay and grain, was the net amount. There were some expenses deducted. I couldn't tell what they would amount to. Those checks for labor which I identified were for labor at the warehouses where they were shipping out the stuff to sell. And those checks to different farmers were probably on account of balances due them on the purchase price of the goods covered by our mortgage.

(On

Recross-Examination

the witness testified as follows:)

The expenses incident to the sale of this property consisted of freight, help, some hauling and general expense in getting rid of the stuff.

Q. You stated the value of the property to be about \$15,000?

A. That is all right. That valuation was put on there as what I considered the price of the goods at that time. Now, as I stated, the price of corn dropped in that period. Corn dropped between April 23rd and the time we sold it. I approved those checks subsequent to April 24th.

Q. There has been introduced in evidence a great many checks. Do you desire the court to understand that all of those checks introduced in evidence represented the purchase price of goods covered by your mortgage?

The COURT.—You can explain it if you want to.

A. My idea was that there was a balance due these

(Testimony of J. K. Russell.)

people upon some of the goods we had a mortgage upon.

Q. That was the way you understood it?

A. Yes; that is why they were passed.

Q. By The COURT.—There is some in there for labor?

A. And some for freight.

Q. By Mr. CHASE.—The checks that were given during the month of March in the purchase of grain—

A. Those checks were for stuff that I knew was for some of the money that we advanced.

Q. All for grain?

A. That is all he was doing.

Q. Did he make any fresh purchase in March?

A. If he did it was replacing some of the stock that he had already gotten.

Q. And did he make any fresh purchase in March for the replacing of property that he sold and were any of these checks paid for stuff bought in March? Were any of those checks paid for goods bought in March?

A. I don't know whether they were bought in March or not.

Q. Examine the checks and see whether any of them were paid for goods bought in March.

A. I see a good many of these are for labor. Mostly all of them,—and paying interest on notes.

Q. By The COURT.—Do the checks show on their face what they were supposed to be for?

A. A majority of them.

I can't state whether Bannister made any purchases of hay and grain in February or March or April pre-

(Testimony of J. K. Russell.)

vious to April 23rd. After April 23rd there was none purchased that I know of. None went into the warehouse. I was down there frequently during January, February and March, and knew that Bannister was shipping in hay and grain during that time, and I knew a great deal of it. I advanced money to enable him to purchase hay and grain from the parties mentioned in the mortgages and he purchased some from other people besides. He may have used some of the money in stock that he was buying and selling and putting in the warehouse. That is where I got my other mortgages. There was a margin all the time. He purchased stuff from other people besides this. That is why I took the mortgage on the warehouse. As one of the mortgages states, some of the stuff was already in the warehouse and some on the ranch. I can't recall any particular purchase that he made after January 12th other than those mentioned in the mortgages. I don't know whether he did or did not make other purchases.

(Stipulated that the foregoing statement is a full, true and correct statement of all the evidence introduced and received on the trial of said causes.)

ERNEST U. SCHROETER,
LUCIUS K. CHASE,

Attorneys for Plaintiff.

G. HAROLD JANEWAY,
HUNSAKER & BRITT,

Attorneys for Defendants.

EXHIBIT "A."

THIS MORTGAGE, made the ... day of
191... by of
County of, State of California, by
occupation mortgagor, to The National
Bank of Bakersfield, by occupation a banking corpora-
tion, mortgagee.

Witnesseth: That the said mortgagor mortgages to
said mortgagee all that certain personal property situ-
ated and described as follows, to-wit:

.....
.....
.....
as security for the payment to the said mortgagee of
..... promissory note., in the words and figures
following, to-wit:

It Is Also Agreed that if the said mortgagor shall
fail to make any payment in said promissory note pro-
vided, then said mortgagee shall have the right to the
immediate possession of said mortgaged property and
make take possession of all of said property and use all
necessary force so to do.

In Witness Whereof, the said mortgagor has here-
unto set h... hand and seal, the day and year first
above written.

..... (Seal)

State of California,
County of Kern,—ss.

..... the mortgagor in the fore-
going mortgage named, being first duly sworn, deposes

and says: That said mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

.....
 Subscribed and sworn to before me, this day of
 191..

.....
 Notary Public in and for Said County and State.

State of California,
 County of Kern,—ss.

....., being first duly sworn,
 says: That he is an officer of The National Bank of
 Bakersfield, the mortgagee named in the foregoing
 mortgage, to-wit, the Cashier of said bank,
 and makes this affidavit on behalf of said mortgagee;
 that the said mortgage is made in good faith and with-
 out any design to hinder, delay or defraud any creditor
 or creditors.

.....
 Subscribed and sworn to before me, this day of
 191..

.....
 Notary Public in and for Said County and State.
 (Endorsements)

Chattel Mortgage

..to..

Dated 191.. Filed for record at the re-
 quest of A. D. 191 at
 min. past o'clock M., and recorded in Vol.
 of page
 County Records. Recorder.
 By Deputy Recorder.

The foregoing statement of evidence in conformity with Equity Rule No. 75 is hereby allowed and settled and certified to be a true and correct statement of all the evidence introduced and received on the trial of said causes.

Dated March 2", 1917.

OSCAR A. TRIPPET,

District Judge.

[Endorsed]. Original. No. A 32. In Equity. B 94.

" " In the District Court of Appeal, Second Appellate District, State of California. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., Defendants. Statement of the Evidence in conformity with Equity Rule No. 75. Filed Mar. 2, 1917. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defts.

In Equity. No. B 94.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

WILLIAM H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, a Bankrupt,
Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States,
Defendant.

Petition for Appeal and Allowance Thereof.

The above named defendant, conceiving itself aggrieved by the decree made and entered on the 24th day of July, 1916, in the above entitled cause, does hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith; and defendant prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

G. HAROLD JANEWAY,
HUNSAKER & BRITT,
Attorneys for Defendant.

Dated January 16, 1917.

And now, to wit, on January 16, 1917, it is ordered that the appeal be allowed as prayed for.

OSCAR A. TRIPPET,
District Judge.

[Endorsed]: Original. No. B 94. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant. vs. National Bank of Bakersfield, a corporation, etc., Defendant. Petition for Appeal and Allowance Thereof. Filed Jan. 16, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendant.

In Equity. No. A 32.

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

WILLIAM H. MOORE, JR., as Trustee of the Estate
of Alfred W. Bannister, Bankrupt,

Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a cor-
poration organized and existing under and by
virtue of the laws of the United States; J. K.
RUSSELL and J. F. GALTES,

Defendants.

Petition for Appeal and Allowance Thereof.

The above named defendants, conceiving themselves aggrieved by the decree made and entered on the 17th day of July, 1916, in the above entitled cause, do hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors, which is filed herewith; and defendants pray that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

G. HAROLD JANEWAY,
HUNSAKER & BRITT,

Attorneys for Defendants.

Dated January 16, 1917.

And now, to wit, on January 16th, 1917, it is ordered that the appeal be allowed as prayed for.

OSCAR A. TRIPPET,
District Judge.

[Endorsed]: Original. No. A 32. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., et al., Defendants. Petition for Appeal and Allowance Thereof. Filed Jan. 16, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendants.

In Equity. No. B 94.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

WILLIAM H. MOORE, JR., as Trustee of the Estate
of Alfred W. Bannister, a Bankrupt,
Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States,
Defendant.

Assignment of Errors.

The defendant above named prays an appeal from the final decree of this Court to the Circuit Court of Appeals of the United States for the Ninth Circuit, and assigns for error:

1. That the Court erred in overruling defendant's objections to the amendment to the Bill herein, which objections were taken by way of answer to said amend-

ment on account of the insufficiency of its allegations of fact and the uncertainty thereof.

2. That the Court erred in receiving, over the objection of defendant, testimony in support of the allegations of said amendment to the Bill herein, which evidence in substance was to the effect that Bannister on certain dates not specified in said amendment incurred certain indebtedness the amounts of which and the names of the creditors in question were not specified in said amendment.

3. That the Court erred in decreeing that certain chattel mortgage of date December 21, 1914, executed by Alfred W. Bannister in favor of defendant, covering the corrugated iron and frame warehouse at Wyble Ordhard Siding, Kern County, to be null and void and of no effect.

4. That the Court erred in decreeing that certain chattel mortgage of date January 5, 1915, executed by Alfred W. Bannister in favor of defendant, covering Bannister's Stutz automobile, to be null and void and of no effect.

5. That the Court erred in decreeing that certain "blanket" chattel mortgage of date January 12, 1915, executed by Alfred W. Bannister in favor of defendant, covering various items of grain and hay therein specified, to be null and void and of no effect.

6. That the Court erred in decreeing that payments made by Alfred W. Bannister to defendant, between April 23, 1915, and May 5, 1915, to the amount of \$1,000.00, constituted a preference within the meaning of the provisions of the United States Bankruptcy Act, and in decreeing said payments to be invalid.

7. That the Court erred in decreeing that defendant pay to plaintiff the sum of \$9381.13, together with interest thereon at seven per cent per annum from July 10, 1915.

8. That the Court erred in holding that defendant did not, prior to May 5, 1915, take possession of the property described in said "blanket" chattel mortgage of date January 12, 1915, and in the various other chattel mortgages received by defendant from said Bannister.

9. That the Court erred in holding that defendant did not have an equitable lien upon the property described in said recorded chattel mortgages of date December 21, 1914, January 5, 1915, and January 12, 1915, respectively, by reason of the transactions by which said mortgages were respectively received by defendant.

10. That the Court erred in holding that the defendant did not have an equitable lien by virtue of the unrecorded chattel mortgages of date November 11, 1914, December 1, 1914, December 9, 1914, December 21, 1914, January 4, 1915, January 5, 1915, and January 12, 1915, upon the property in said mortgages described, by virtue of the transactions by which said mortgages were respectively received by defendant.

11. That the Court erred in denying defendant's motion to dismiss the bill of complaint, which motion was made at the close of plaintiff's testimony, upon the ground that plaintiff had failed to establish the issues raised by the pleadings and the existence of the elements of the preferences alleged to have been committed by Bannister in favor of defendant.

WHEREFORE, defendant prays that the decree of said District Court in the cause above entitled be reversed.

G. HAROLD JANEWAY,
HUNSAKER & BRITT,
Attorneys for Defendant.

[Endorsed]: Original. No. B 94. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., Defendant. Assignment of Errors. Filed Jan. 16, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendant.

In Equity. No. A 32.

*In the District Court of the United States, in and for
the Southern District of California, Southern
Division.*

WILLIAM H. MOORE, JR., as Trustee of the Estate
of Alfred W. Bannister, Bankrupt,
Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States; J. K. RUSSELL, and J. F. GALTES,
Defendants

Assignment of Errors.

The defendants above named pray an appeal from the final decree of this Court to the Circuit Court of Appeals of the United States for the Ninth Circuit, and assign for error:

1. That the Court erred in denying defendants' motion to dismiss the bill of complaint, which motion was made at the close of plaintiff's testimony, upon the ground that plaintiff had failed to establish the issues raised by the pleadings and the existence of the elements of the preference alleged to have been committed by Bannister in favor of defendants.

2. That the Court erred in decreeing that certain deed of trust bearing date April 8, 1915, executed by Alfred W. Bannister in favor of J. K. Russell and J. F. Galtes, as Trustees for defendant National Bank of Bakersfield, constituted a preference within the meaning of the United States Bankruptcy Act, and in declaring said deed of trust to be null and void and of no effect.

WHEREFORE, defendants pray that the decree of said District Court in the cause above entitled be reversed.

G. HAROLD JANEWAY,
HUNSAKER & BRITT,

Attorneys for Defendants.

[Endorsed]: Original. In Equity. No. A 32. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., et al., Defendants. Assignment of Errors. Filed Jan. 16, 1917. Wm. M. Van Dyke,

Clerk. By Leslie S. Colyer, Deputy Clerk. G. Harold Janeway, Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendants.

In Equity. No. B 94.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

WILLIAM H. MOORE, JR., as Trustee of the Estate
of Alfred W. Bannister, a Bankrupt,
Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States,
Defendant.

Supersedeas Bond.

KNOW ALL MEN BY THESE PRESENTS that we, National Bank of Bakersfield, a corporation, as principal, and W. A. Ferguson, A. P. Eyraud, F. H. Hall and E. D. Burge, as sureties, are held and firmly bound unto William H. Moore, Jr., Trustee of the Estate of Alfred W. Bannister, Bankrupt, in the full and just sum of \$10,500.00, together with costs and interest on appeal, to be paid to the said William H. Moore, Jr., trustee of the estate of Alfred W. Bannister, bankrupt, his successor in interest or assigns, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our, and each of our, heirs, successors in interest, executors and administra-

tors, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 19th day of October, 1916.

WHEREAS the above named National Bank of Bakersfield has prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the decree rendered in the above entitled suit by a Judge of the District Court of the United States for the Southern District of California, Southern Division:

NOW, THEREFORE, the condition of this obligation is such that if the above named National Bank of Bakersfield shall prosecute said appeal to effect, and answer all damages and costs if it fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

NATIONAL BANK OF BAKERSFIELD.

By F. H. HALL,

President.

By J. K. RUSSELL,

Secretary.

[Corporate Seal]

W. A. FERGUSON,

A. P. EYRAUD,

F. H. HALL,

E. D. BURGE,

Sureties.

State of California,

County of Kern,—ss.

E. D. BURGE, being by me first duly sworn, de-

poses and says: That he is a resident of, and freeholder in, the State of California, and is worth the amount of the penalty of the within bond over and above all debts and liabilities and exclusive of property except from execution.

E. D. BURGE.

Subscribed and sworn to before me this 19th day of October, 1916.

[Seal]

C. H. FRANEY,

Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

W. A. FERGUSON, A. P. EYRAUD and F. H. HALL, being by me first duly sworn, each for himself, and not one for the other, deposes and says: That he is a resident of, and freeholder in, the State of California, and is worth the amount of the penalty of the within bond over and above all debts and liabilities and exclusive of property exempt from execution.

W. A. FERGUSON.

A. P. EYRAUD.

F. H. HALL.

Subscribed and sworn to before me this 19th day of October, 1916.

[Seal]

C. H. FRANEY,

Notary Public in and for the County of Kern, State of California.

Approved this 16 day of Jan., 1917, by

TRIPPET,
District Judge.

O. K. CHASE.

[Endorsed]: Original. No. B 94. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., Defendant. Supersedeas Bond. Filed Jan. 16, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendant.

In Equity. No. A 32.

In the District Court of the United States, in and for the Southern District of California, Southern Division.

WILLIAM H. MOORE, JR., as Trustee of the Estate of Alfred W. Bannister, Bankrupt,

Complainant,

vs.

NATIONAL BANK OF BAKERSFIELD, a corporation organized and existing under and by virtue of the laws of the United States; J. K. RUSSELL and J. F. GALTES,

Defendants.

Supersedeas Bond.

KNOW ALL MEN BY THESE PRESENTS that we, National Bank of Bakersfield, a corporation, J. K. Russell and J. F. Galtes, as principals, and W. A. Ferguson, A. P. Eyraud, F. H. Hall and E. D. Burge, as sureties, are held and firmly bound unto William H. Moore, Jr., Trustee of the Estate of Alfred W. Ban-

nister, Bankrupt, in the full and just sum of \$300.00, together with costs and interest on appeal, to be paid to the said William H. Moore, Jr., trustee of the estate of Alfred W. Bannister, bankrupt, his successor in interest or assigns, for the payment of which, well and truly to be made, we bind ourselves, and each of us, our, and each of our, heirs, successors in interest, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated the 19th day of October, 1916.

WHEREAS, the above named National Bank of Bakersfield, J. K. Russell and J. F. Galtes have prosecuted an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the decree rendered in the above entitled suit by a Judge of the District Court of the United States for the Southern District of California, Southern Division:

NOW, THEREFORE, the condition of this obligation is such that if the above named National Bank of Bakersfield, J. K. Russell and J. F. Galtes shall prosecute said appeal to effect, and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

NATIONAL BANK OF BAKERSFIELD.

By F. H. HALL,

President.

By J. K. RUSSELL,

Secretary.

[Corporate Seal]

J. K. RUSSELL.

(Seal)

J. F. GALTES.

(Seal)

W. A. FERGUSON, (Seal)

A. P. EYRAUD, (Seal)

E. D. BURGE, (Seal)

F. H. HALL, (Seal)

Sureties.

State of California,
County of Kern,—ss.

E. D. BURGE, being by me first duly sworn, deposes and says: That he is a resident of, and freeholder in, the State of California, and is worth the amount of the penalty of the within bond over and above all debts and liabilities and exclusive of property exempt from execution.

E. D. BURGE.

Subscribed and sworn to before me this 19th day of October, 1916.

[Seal]

C. H. FRANEY,
Notary Public in and for the County of Kern, State of California.

State of California,
County of Kern,—ss.

W. A. FERGUSON, A. P. EYRAUD and F. H. HALL, being by me first duly sworn, each for himself, and not one for the other, deposes and says: That he is a resident of, and freeholder in, the State of California, and is worth the amount of the penalty of the within bond over and above all debts and liabilities and exclusive of property exempt from execution.

F. H. HALL.

W. A. FERGUSON,
A. P. EYRAUD.

Subscribed and sworn to before me this 19th day of October, 1916.

[Seal]

C. H. FRANEY,

Notary Public in and for the County of Kern, State of California.

Approved this 16 day of Jan., 1917, by

TRIPPET,

District Judge.

O. K. CHASE.

[Endorsed]: Original. No. A 32. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., et al., Defendants. Supersedeas Bond. Filed Jan. 16, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendants.

*In the District Court of the United States, for the Southern District of California, Southern Division.
Hon. Oscar A. Trippet, District Judge.*

No. A 32 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD, et al.,
Defendants.

No. B 94 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD,
Defendant.

Praeceptum to the Clerk.**TO THE CLERK:**

You are requested to take a joint transcript of record, to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to appeals allowed in the above entitled causes (said causes having been tried together), and to include in such transcript of record the following, and no other papers or exhibits, to wit:

1. The names and addresses of attorneys for the respective parties.
2. Citation on appeal with endorsements thereon in A 32.
3. Bill of complaint in A 32.
4. Answer in A 32.
5. Decree in A 32.
6. Assignment of errors in A 32.
7. Petition for appeal and allowance thereof in A 32.
8. Supersedeas bond in A 32.
9. Citation on appeal with endorsements thereon in B 94.
10. Bill of complaint in B 94.
11. Answer in B 94.
12. Amendment to bill of complaint in B 94, together with attached stipulation and order thereon.
13. Answer to amendment to bill in B 94.
14. Stipulation to amend the amendment to the bill of complaint and order authorizing such amendment.
- 14½. Amendment to bill of complaint in B 94 as amended.
15. Decree in B 94.

16. Assignment of errors in B 94.
17. Petition for appeal and allowance thereof in B 94.
18. Supersedeas bond in B 94.
19. Order denying motions to dismiss bills of complaint in A 32 and B 94.
20. Memorandum opinion of the Court.
21. Stipulation respecting joint transcript and costs on appeal.
22. Praeipie to the clerk for transcript of record.
23. Certificate of the clerk to transcript of record.
24. Stipulation and order enlarging time to file record and docket causes.
25. Statement of the evidence.

G. HAROLD JANEWAY,
HUNSAKER & BRITT,

Attorneys for Defendants and Appellants.

Approved:

ERNEST U. SCHROETER,
LUCIUS K. CHASE,

Attorneys for Plaintiff and Appellee.

[Endorsed]: Original. No. A 32. In Equity. B. 94. In Equity. In the United States District Court, Southern District of California, Southern Division. William H. Moore, Jr., etc., Complainant, vs. National Bank of Bakersfield, a corporation, etc., Defendant. Praeipie to the Clerk. Filed Mar. 2, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. C. L. Claffin, G. Harold Janeway and Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendant.

*In the District Court of the United States, for the
Southern District of California, Southern Division.
Hon. Oscar A. Trippet, District Judge.*

No. A 32 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD, et al.,
Defendants.

No. B 94 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD,
Defendant.

**Stipulation Respecting Joint Transcript and Costs on
Appeal.**

IT IS HEREBY STIPULATED THAT a joint transcript covering both causes above entitled may be prepared and used as the record upon the appeal of said causes from the decrees therein of the aforesaid District Court, and that both said causes be considered in a single set of briefs on said appeals; also that costs on said appeals may follow the decision of the Appellate Court in B 94.

Dated February 26th, 1917.

LUCIUS K. CHASE,

E. U. SCHROETTER,

Attorneys for Plaintiff.

G. HAROLD JANEWAY,

HUNSAKER & BRITT,

Attorneys for Defendants.

[Endorsed]: Original. Nos. A 32 and B 94 Equity. In the United States District Court, Southern District of California, Southern Division. Wm. H. Moore, Jr., Plaintiff, vs. National Bank of Bakersfield, et al., Defendants. Stipulation Respecting Transcript on Appeal. Filed Mar. 2, 1917. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. C. L. Claflin, G. Harold Janeway, Hunsaker & Britt, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Deft.

*In the District Court of the United States, for the
Southern District of California, Southern Division.
Hon. Oscar A. Trippet, District Judge.*

No. A 32 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD, et al.,
Defendants.

No. B 94 Equity.

WM. H. MOORE, JR.,

Plaintiff,

vs.

NATIONAL BANK OF BAKERSFIELD,
Defendant.

Stipulation Extending Time.

IT IS HEREBY STIPULATED that appellants may have thirty days additional time, to wit, to and including March 17, 1917, in which to file their joint transcript on appeal in the actions entitled as above,

or the record thereof, and within which to docket said causes with the clerk of the Circuit Court of Appeals for the Ninth Circuit; and that an order enlarging such time in accordance with this stipulation may be made.

Dated February 5, 1917.

LUCIUS K. CHASE,
E. U. SCHROETTER,
Attorneys for Appellees.

So ordered.

Dated February 6th, 1917.

TRIPPET,

District Judge.

[Endorsed]: No. A32 Equity. B94 Equity. In the United States District Court, Southern District of California, Southern Division. Wm. R. Moore, Jr., Plaintiff. vs. National Bank of Bakersfield, et al., Defendants. Stipulation Extending Time. Hunsaker & Britt and Le Roy M. Edwards, 1132-1143 Title Insurance Bldg., Fifth and Spring streets, Los Angeles, Cal. Attorneys for Defendants.